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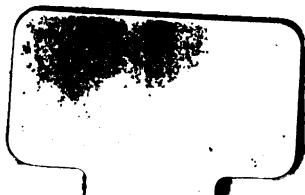
A SUMMARY OF MILITARY LAW.

H. F. MORGAN,

LATE CAPTAIN WEST REGIMENT.



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A SUMMARY OF MILITARY LAW

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A SUMMARY
OF
MILITARY LAW

COMPANION VOLUME TO
"A SUMMARY OF TACTICS"

BY
H. F. MORGAN
LATE CAPTAIN 28TH REGIMENT
AUTHOR OF "THE WHIST-PLAYER'S GUIDE"



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P R E F A C E.

IN compiling this book and its companion, *A Summary of Tactics*, two objects have been kept in view—*first*, that they may be useful to officers of Militia who are preparing for the competitive examinations for entrance to the Line, &c. ; and, *second*, that they may be suitable for the use of officers of the Army who are working for their promotion.

My work has consisted in putting the views of all the well-known authorities on the subjects treated of into as concise, and at the same time as clear, a form as possible.

The “question and answer” style in which these books are written enables a student to test his knowledge from time to time ; while the ample index appended to each makes reference to any subject a momentary matter.

H. F. M.

February, 1883.



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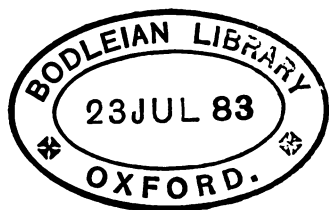
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A Summary of Military Law.

ARMY ACT.

1. When was the first Mutiny Act passed, and what was it called ?

2. When were the Articles of War introduced for the regulation of the forces abroad, and noted in the Mutiny Act ?

3. When did the Militia first come under the Mutiny Act ?

4. What code was introduced instead of the Mutiny Act and Articles of War, and in what year ?

5. What is the difference between Military Law and Martial Law ?

A Summary of Military Law.

In 1689, "An Act for punishing officers or soldiers who shall mutiny or desert their Majesties' service."

In 1712.

In 1756, when under arms.

"The Army Discipline and Regulation Act" in 1879—this being succeeded in 1881 by an amended Army Act.

Military Law has only to do with the land forces under the Army Act.

Martial Law affects all persons, civil or military.

Martial Law is practically no law at all, and when proclaimed, its rules and regulations are distinctly laid down—also how it is to be carried out. The proclamation of Martial Law supersedes all ordinary law. It can only be used against persons found in open resistance. These are tried by court-martial when the ordinary law courts are closed.

NOTE.—Beyond a few general questions, I do not go into the first forty sections of the Army Act. Anyone wishing to be able to frame charges should know these sections *word for word*. Too much importance cannot, therefore, be attached to a knowledge of them.

A Summary of Military Law.

6. What are the offences punishable with penal servitude at any time?

A Summary of Military Law.

Sect. 17. Stealing, fraudulently misapplying or embezzling public money or goods by one charged with the care of them, or conniving at others stealing or embezzling or wilfully damaging any such goods.

Sect. 20. Wilfully releasing a prisoner without proper authority, or wilfully permitting escape of prisoners when in charge of them.

Sect. 32. After having been discharged with disgrace from a part of Her Majesty's forces, or dismissed with disgrace from the navy, enlisting in the regular forces without declaring the circumstances of his discharge or dismissal.

Sect. 41. Civil offences, manslaughter, treason-felony, and rape.

Also, all offences punishable with death, such as

Sect. 7. Mutiny and sedition.

Seducing any person in the regular, reserve, or auxiliary forces, or in the navy, from allegiance, or persuading to join in mutiny or sedition.

Sect. 8. Striking or offering violence to a superior officer *in the execution of his office*.

Sect. 9. Disobeying, in such a manner as to show *wilful* defiance of authority, a lawful command given personally by a superior *in the execution of his office*.

Sects. 12 and 13. Desertion, persuading or attempting to persuade to desert, and fraudulent enlistment—
SECOND OFFENCE.

A Summary of Military Law.

7. What are the offences punishable with penal servitude on active service only?

8. Name the offences punishable with death at any time.

A Summary of Military Law.

Sect. 5. (1) Leaving the ranks without orders to secure prisoners or take wounded to the rear, or wilfully destroying or damaging any property.

(2) Being taken prisoner through carelessness or disobedience of orders, or neglect and failing to rejoin when able.

(3) Holding correspondence with, or sending flag of truce to, the enemy without due authority.

(4) Spreading reports, by words or by signals or otherwise, in action, or previously to going into action, calculated to create alarm or despondency.

Sect. 8. Striking or using or offering violence to a superior, or using threatening or insubordinate language to a superior.

Sect. 9. Disobeying the lawful command of a superior.

Sect. 7. Mutiny and sedition.

Seducing any person in the regular, reserve, or auxiliary forces, or in the navy, from allegiance, or persuading to join in mutiny or sedition.

Sect. 8. Striking or using or offering violence to a superior *in the execution of his duty*.

Sect. 9. Disobeying, in such manner as to show wilful defiance of authority, the lawful command given personally by a superior *in the execution of his office*.

A Summary of Military Law.

9. What are the offences punishable with death on active service only?

A Summary of Military Law.

Sect. 4. (1) Shamefully abandoning, or compelling or inducing any other person shamefully to abandon, any garrison, place, post, or guard.

(2) Shamefully casting away arms, ammunition, or tools in the presence of the enemy.

(3) Treacherously holding correspondence with, or through cowardice or treachery sending a flag of truce to, the enemy.

(4) Assisting the enemy with arms, &c., or knowingly harbouring an enemy not being a prisoner.

(5) When a prisoner of war, voluntarily serving with or aiding the enemy.

(6) On active service, knowingly doing an act calculated to imperil the success of Her Majesty's forces.

(7) Misbehaving, or inducing others to misbehave, before the enemy in such a manner as to show cowardice.

Sect. 6. (1) Leaving his commanding officer to search for, or breaking into any place in search of, plunder.

(2) Leaving a guard, picquet, patrol, or post without orders.

(3) Forcing a safeguard, or forcing or striking a soldier acting as sentinel.

(4) Impeding or neglecting to assist anyone legally exercising the authority of Provost-Marshal.

(5) Doing violence to persons bringing supplies, or committing any offence against the person or property of any resident in the country in which he is serving.

(6) Intentionally causing false alarms by deeds or words.

(7) Treacherously betraying parole watchword or countersign, or altering it without sufficient cause.

A Summary of Military Law.

9. What are the offences punishable with death on active service only?

10. Army Act, 41. What are the offences punishable by ordinary law of England, and how are they dealt with?

11. A.A. 42. How does an officer make a complaint, and how is it dealt with?

12. A.A. 43. How does a soldier make a complaint?

A Summary of Military Law.

(8) Misappropriating supplies.

(9) Sleeping or being drunk on sentry, or leaving his post before being regularly relieved.

Sect. 12. Desertion, attempt at desertion, or persuading anyone subject to military law to desert, both on active service and when under orders for active service.

Sect. 41 authorises the trial of all persons subject to military law by court-martial for treason, murder, manslaughter, or rape, where civil courts are not sitting within 100 miles—Gibraltar excepted.

If an officer does not receive redress (satisfactory to him) from his commanding officer, he can complain to Commander-in-Chief, who enquires into complaint, and reports through Secretary of State to Her Majesty in order to obtain Her Majesty's directions thereon.

A soldier complains to his captain, and if he does not receive satisfactory redress, to his commanding officer, or the general or officer commanding the station. Any officer to whom a complaint is made must enquire into it, and, if satisfied of the justice of the same, take steps to see that the soldier obtains redress.

A Summary of Military Law.

13. A.A. 44. Give the scale of punishments by court-martial in the case of officers.

14. A.A. 44. Give the scale of punishments by court-martial in the case of soldiers.

15. A.A. 44. (3) Can an officer sentenced to forfeiture of seniority be awarded any other punishment?

16. A.A. 44. (4) Can a soldier be sentenced to other punishment at the same time as he is sentenced to be discharged with disgrace?

A Summary of Military Law.

- a.* Death.
 - b.* Penal servitude for a term not less than five years.
 - c.* Imprisonment, with or without hard labour, not exceeding two years.
 - d.* Cashiering.
 - e.* Dismissal from Her Majesty's service.
 - f.* Forfeiture of seniority of rank in army, or in corps to which offender belongs, or both.
 - g.* Reprimand, or severe reprimand.
-

- a.* Death.
 - b.* Penal servitude not less than five years.
 - c.* Imprisonment, with or without hard labour, up to two years.
 - d.* Discharge with ignominy.
 - e.* Reduction of a non-commissioned officer to lower grade or ranks.
 - f.* Forfeitures, fines, and stoppages.
-

Yes ; he may be sentenced to reprimand, or severe reprimand.

Yes ; he may be sentenced to penal servitude or imprisonment, in addition to being sentenced to be discharged with ignominy.

A Summary of Military Law.

17. A.A. 44. (5) How can offences on active service, punishable with death or penal servitude, be dealt with? State those who are exempt from this rule.

18. A.A. 44. (7) Define "An aggravated offence of drunkenness."

19. A.A. 44. (11, 12) What are the forfeitures and deductions which, besides other punishments, an offender is liable to if convicted by court-martial?

20. A.A. 45. If an officer or soldier is in custody more than eight days without a court-martial being assembled, what course must be adopted?

21. A.A. 45. If an officer orders another to be confined in custody, what course must be adopted?

A Summary of Military Law.

On active service, aggravated drunkenness, disgraceful conduct, and other offences punishable with death or penal servitude, can be summarily punished by personal restraint or hard labour without injury to life or limb. Non-commissioned officers, or reduced non-commissioned officers, are exempt.

Drunkenness on the march, on duty, or when warned for duty, or when drunkenness rendered the offender unfit for duty.

Forfeiture of deferred pay—service towards pension—good conduct badge and pay—military decoration or military reward as laid down in Royal Warrant.

Any deduction authorised by this Act to be made from his ordinary pay.

A special report of cause of delay must be made by his commanding officer, and a similar report every eight days, till court-martial assembles.

An officer can order an officer of inferior rank or soldier into custody for any offence. An officer can order another officer, whether senior or not, into custody when engaged in a quarrel, fray, or disorder, and he is bound to obey, whether of the same corps, branch, &c., or not.

A Summary of Military Law.

22. A.A. 45. (4) What course has to be pursued by an officer or non-commissioned officer who commits a person into custody ?

23. A.A. 46. Give at length the powers of a commanding officer who deals summarily with a case, and the number of the Army Act which empowers him to do so.

A Summary of Military Law.

He must deliver, within 24 hours, to the officer or non-commissioned officer commanding the guard, or Provost-Marshal, an account, signed by himself, of the offence.

A.A. 46. Non-commissioned officers—(a) all ranks, reprimand or severe reprimand.

(b) Those acting or holding appointments to revert to former rank—*e.g.*, colour-sergeant or troop sergeant-major to revert to sergeant.

N.B.—*These are not entered in Regimental Defaulters' Book.*

Privates—(a) Admonition.

(b) Imprisonment, with or without hard labour, for seven days (168 hours). (*Absence without leave* over seven days—imprisonment for same number of days as absence *up to twenty-one days.*)

(c) *Confinement to barracks* up to 28 days, 14 of which is punishment drill.

(d) *Board ship*—stoppage of liquor rations instead.

(e) *Extra guards*, or picquets, for offences committed when on these duties.

(f) *Fines for drunkenness*, up to 10/—, may be given, besides other punishment. This is not applicable to non-commissioned officers.

(g) *Stoppages* for loss or damage.

(h) *Deprivation of pay* up to five days; over five days, pay is forfeited by Royal Warrant.

A Summary of Military Law.

24. A.A. 46. (8) What right has a soldier who is not satisfied with an award of imprisonment or fine or deduction from his ordinary pay by his commanding officer ?

25. A.A. 47, R.P. 16. Who can convene a regimental court-martial, and how is it composed ?

26. A.A. 47. (3, 4) Who appoints the president of a regimental court-martial, and what is his rank ?

27. A.A. 47. (5) Give the powers of a regimental court-martial.

A Summary of Military Law.

A soldier ordered imprisonment or fine or deduction from his ordinary pay by his C.O. may demand a D.C.M. It is the duty of the C.O. to inform him of his right, and if the soldier does not demand a D.C.M. he can be tried by a R.C.M.

(1) Any officer authorised to convene general or district courts-martial.

(2) Any officer not below captain when commanding troops or portion of two or more corps.

(3) On board ship, a commanding officer of any rank, without warrant, can convene regimental court-martial to try a man under his command. Shall consist of not less than three officers of not less than a year's service.

The convening officer appoints president not under captain, unless on board ship, or on line of march, or a captain with due regard to the public service is not available. In latter case, such opinion to be stated in order convening the court.

A regimental court-martial has power to punish non-commissioned officers and soldiers by—

(1) *Reduction* to the ranks or to any lower grade.

(2) *Imprisonment* not exceeding 42 days, with or without hard labour.

(3) *Fines* for drunkenness up to £1.

(4) *Stoppages* of pay to make good damage, &c.

A Summary of Military Law.

28. A.A. 48. Who can convene general and district courts-martial? Give their composition.

29. A.A. 48. (6) For the trial of an officer, or for a crime punishable with death or penal servitude, what court-martial must be assembled?

30. A.A. 48. (7) What is the rule as to rank on a court-martial for the trial of a field officer?

31. A.A. 48. (8) How many of the members' votes are necessary for sentence of death.

A Summary of Military Law.

A general court-martial shall be convened by Her Majesty, or officer having authority from Her Majesty.

A district court-martial shall be convened by Her Majesty, or by some officer deriving authority to convene district court-martial from an officer authorised to convene general courts-martial.

A general court-martial in United Kingdom, India, Malta, and Gibraltar, to consist of not less than nine officers; elsewhere, five of not less than three years' service. Five not under the rank of captain.

District court-martial in United Kingdom, India, Malta, and Gibraltar—five officers not under two years' service; elsewhere, not less than three officers.

Note.—The convening of general and district courts-martial is more fully given in Army Act, secs. 122 and 123.

A general court-martial.

No member of the court-martial shall be under rank of captain.

No sentence of death shall be passed without the concurrence of two-thirds at least of the officers on court-martial.

A Summary of Military Law.

32. A.A. 48. (9) Who appoints president of general and district courts-martial, and what must be his rank?

33. A.A. 49, R.P. 103. Who can convene a field general court-martial, and how is it composed? Can the convening officer preside, and what punishments can be awarded?

34. A.A. 50, R.P. 103. May officers of different corps compose a court-martial? When may convening officer, or officer who investigated charges, sit on court? May prosecutor, or witness for prosecution, or commanding officer of prisoner, sit on court-martial?

A Summary of Military Law.

The convening authority appoints president not under field officer, unless the convening officer is of less rank, or unless (as stated in convening order) a field officer is not available. In that case a captain can sit as president, or even *a subaltern on a district* if a captain is not available. In no case can president of a general court-martial be of less rank than captain.

An officer in command of any detachment of troops beyond the seas, on complaint that injury has been committed to property or person—to consist of not less than three officers. *Convening officer can preside*, but he ought to appoint another officer—a captain if available; if not, one of any rank. Cannot award *death* without concurrence of all the members.

Any officer can sit except prosecutor, witness for prosecution, or one having a personal interest in the case.

Proceedings to be transmitted and preserved, like those of a district court-martial.

Officers sitting on general and district courts-martial *should* be, and on regimental *can* be, of different corps. On field general court-martial or summary court-martial a convening officer may sit. By R.P. 103, officer who investigated charge, or prisoner's commanding officer, may sit on a field general court-martial. Prosecutor or witness for prosecution can *never* sit.

A Summary of Military Law.

35. A.A. 51, R.P. 25. State how a prisoner may object to the president or a member, and what course has to be adopted.

36. A.A. 52, R.P. 26. What persons are required to take oath or make solemn declaration at different stages of a court-martial?

37. A.A. 53, R.P. 17. If the president dies, or court is reduced below the legal minimum, or prisoner is seriously ill after a court-martial has commenced its trial, what course must be adopted?

A Summary of Military Law.

Prisoner may object to any officer on his court-martial except prosecutor or Judge-Advocate, and call evidence to support his objection. If more than one officer is objected to, each case will be disposed of separately, that against lowest of rank first. In an objection against president, one-third of members must allow it, and against a member one-half, or it is not allowed. If objection to president is allowed, the convening authority appoints another president; if objection to a member is allowed, a waiting member (if any) takes his place.

The president, the members, the Judge-Advocate (if any), every officer in attendance for instruction, shorthand writer, all witnesses.

If there is a Judge-Advocate, he administers oath to president first, and then to members.

If there is no Judge-Advocate, president swears members, and one of them swears the president.

(1) If a court-martial after commencement is reduced below legal minimum by death or otherwise, it shall be dissolved.

(2) If president dies or cannot attend, convening officer may appoint senior member if of sufficient rank, and the court not below legal minimum, or a new president.

A Summary of Military Law.

37. A.A. 53, R.P. 17. If the president dies, or court is reduced below the legal minimum, or prisoner is seriously ill after a court-martial has commenced its trial, what course must be adopted ?

38. A.A. 54, R.P. 50-55. Who confirm the *five* kinds of courts-martial ?

39. A.A. 55, R.P. 104, 105, 117. Who can convene a summary court-martial? Give its composition and powers.

A Summary of Military Law.

(3) Illness of prisoner *before finding*, court can be dissolved, and prisoner can be tried again.

Regimental court-martial is confirmed by convening officer.

General court-martial by Her Majesty, or some one authorised by her.

District court-martial by officer authorised to convene general courts-martial, or an officer authorised by him to confirm district courts-martial.

Field general court-martial by an officer authorised to confirm general courts-martial for offences in the field, and under whose command the convening officer is.

Summary court-martial by general or other officer in command of a corps or part of a corps on active service to which the prisoner belongs, except sentence of death, which must be confirmed by general commanding the force. Prosecutor, provost-marshal, or assistant provost-marshal can never confirm.

An officer in command of troops on active service, when it is not practicable to assemble an ordinary court-martial. To consist of three officers if available; if not, two. Each to have three years' service, if

A Summary of Military Law.

39. A.A. 55, R.P. 104, 105, 117. Who can convene a summary court-martial? Give its composition and powers.

40. A.A. 56. Can a prisoner charged with an offence be convicted of another crime?

A Summary of Military Law.

possible ; if not, *must* have a year's service. Convening officer may be president if three other officers not available—captain should preside if one can be got. If court consists of three, they have powers of a general court-martial, except that all must concur in sentence of death. When only two members, they can award summary punishment, or imprisonment up to two years.

(1) Charged with stealing, he can be found guilty of embezzlement, or fraudulently misapplying money or property.

(2) Charged with embezzlement, he can be found guilty of stealing or misapplying.

(3) Charged with desertion, he can be found guilty of attempting to desert, or absence without leave.

(4) Charged with attempting to desert, he can be found guilty of desertion or absence without leave.

(5) Charged with any other offence under Army Act, and proof failing as to offence being committed on active service, or wilful defiance of authority, involving higher degree of punishment, he can be punished by the lesser punishment for the same offence.

A Summary of Military Law.

45. A.A. 72, R.P. 124. What course has to be adopted when a soldier has been absent without leave for 21 days?

46. A.A. 73. When a soldier signs a confession of desertion or fraudulent enlistment, what course ought a competent military authority to pursue?

47. A.A. 74. What are the powers of a provost-marshal? By whom, and for what purpose is he appointed?

A Summary of Military Law.

(1) Assemble a Court of Inquiry to investigate *on oath*, and declare the period of absence and deficiencies (if any) of equipment, regimental necessaries, or clothing. The commanding officer to enter in regimental books a record of declaration of the court.

(2) If absentee does not rejoin, such record to be a legal conviction of desertion.

(1) He may dispense with trial, and award the same *forfeitures* and *stoppages* as a court-martial, or as are consequent on conviction under Sect. 79. (These are forfeiture of all prior service, of annuity and medal, &c.)

(2) If there is no proof of truth or falsehood of confession, the record, countersigned by commanding officer, is entered in regimental books, and soldier does duty with the corps in which he is serving, or any other, till discharge or proof is obtained.

(3) If his confession is untrue, he can be punished for making a false statement.

He is appointed by general commanding body of troops abroad, and may arrest and detain for trial all offenders under military law. May execute punishment awarded by court-martial, but shall not inflict any on his own authority.

A Summary of Military Law.

48. A.A. 76. What is the limit of original enlistment?

49. A.A. 77. State the terms of an original enlistment under the Army Act.

50. A.A. 78. What changes can the Secretary of State make in the conditions of a soldier's service with his consent?

51. A.A. 79. From what date does a soldier's service reckon?

A Summary of Military Law.

Twelve years.

(1) For whole term of his original enlistment in army service.

(2) For such portion of his original enlistment as may be fixed by Secretary of State (and specified in attestation paper) in army service, and residue of term in the reserve.

To enter reserve at once for the unexpired term of his original enlistment.

To extend his army service for all or any part of the unexpired term.

To extend the term of his original enlistment up to 12 years.

Secretary of State may, by general or special regulations, vary conditions of service, so that a man in reserve can re-enter upon army service for part or whole of his unexpired term, or for any period up to 12 years.

From the date of his attestation.

A Summary of Military Law.

52. A.A. 79. If a soldier confesses to (or is convicted of) desertion or fraudulent enlistment, what is the rule as regards his former service ?

53. A.A. 80. State briefly the mode of enlistment of a recruit, and what is deemed to be the date of his attestation.

54. A.A. 81. How can a recruit purchase his discharge ?

A Summary of Military Law.

The whole of his prior service shall be forfeited, and he shall be liable to serve for the full term of his enlistment, reckoned from date of conviction or order dispensing with trial, as if he was only attested on that day.

Provided that Secretary of State may restore whole or any part of forfeited service to any soldier who performs good and faithful service, or is recommended for such restoration by court-martial.

Any person wishing to enlist is told by the recruiter the time to appear before a justice. If he presents himself in a sober state, and states he wishes to enlist, the justice cautions him against making false answers, reads and explains the attestation questions, and sees the answers are properly noted. He then requires the recruit to sign the declaration which states the answers are true, and administers the oath of allegiance. The justice then signs the paper, and the recruit is enlisted. His service begins from the date of his signing the attestation paper.

By lodging £10 within three months of his attestation he is discharged with all possible speed, except in cases of emergency, when Her Majesty is authorised to retain soldiers in army service. In that case, he is discharged at expiration of such period of emergency.

A Summary of Military Law.

55. A.A. 82. Are recruits enlisted for general service or for particular corps? How are they appointed to corps?

56. A.A. 83 and its clauses. When may soldiers be transferred, with or without their own consent, either to a corps of the same or to a corps of a different arm?

A Summary of Military Law.

By general or special regulations, made from time to time by the Secretary of State, soldiers may enlist in particular corps ; but unless such regulations exist, a recruit is enlisted for general service.

If enlisted for any particular corps, the recruit is posted to it as soon as practicable ; and if for general service, to some corps of the regular forces.

A soldier, whether enlisted for general service or not, having been posted to a corps or branch, shall stay in the same during his service or re-engagement, unless transferred under the following conditions—

(1) A soldier enlisted for general service may be transferred *within three months* to any corps of the regular forces of the same arm or branch.

(2) A soldier, *with his consent*, may be transferred to any corps.

(3) If a soldier is transferred to a different arm or branch, the competent military authority may vary the conditions of his service as required.

(4) A competent military authority may transfer any soldier to a corps of the same branch in the United Kingdom or to the reserve (*vide* A.A. 89)—

(a) If he has been invalided home ; or,

(b) If his corps is ordered abroad, and he is found medically unfit, or is within two years of his discharge.

(5) If a soldier, enlisted to serve part of his time in the reserve, has not extended his army service,

A Summary of Military Law.

56. A.A. 83 and its clauses. When may soldiers be transferred, with or without their own consent, either to a corps of the same or to a corps of a different arm?

57. A.A. 84. What is the rule as regards the re-engagement of soldiers?

A Summary of Military Law.

and has still two more years to serve when his regiment is ordered home or to another station, he may be transferred to another corps of the same branch.

(6) If a soldier is transferred to serve as a warrant officer, or in the corps of armourer sergeants, or in the Army Hospital corps, or in the Army Service corps or staff, or in any corps other than Infantry, Cavalry, Artillery, or Engineers, he may be removed to serve with any corps in the United Kingdom, or at any station where he is serving, either in the rank he originally held or in a lower one.

(7) If a soldier has been convicted of desertion or fraudulent enlistment, or has confessed the offence and his trial has been dispensed with, or has been sentenced by court-martial to *not less* than six months' imprisonment, he may have part or whole of his sentence commuted, and be ordered general service.

(8) A soldier in military custody, or committed by summary jurisdiction as a deserter, can be transferred to any corps, and serve with it, without prejudice to his subsequent trial and punishment.

(1) Subject to special regulations, a soldier, within three years of the completion of his time (with consent of his commanding officer and approval of competent military authority), may re-engage for a

A Summary of Military Law.

57. A.A. 84. What is the rule as regards the re-engagement of soldiers ?

58. A.A. 85. Can a soldier continue in the service after twenty-one years ?

59. A.A. 86. Can a non-commissioned officer re-engage and continue in the service ?

60. A.A. 87. State the circumstances under which a soldier's service can be prolonged without his consent.

A Summary of Military Law.

further period, making up a total of twenty-one years in all, including the time served in reserve.

(2) A soldier who re-engages can forfeit his previous re-engaged service in the same manner as if he were liable for offences during his original service.

(3) A soldier who so re-engages makes a declaration of the fact before his commanding officer.

Yes; within a year of his completing twenty-one years he can state to his commanding officer his wish to continue in the service, and, if the competent military authority approves, he can do so.

In that case he can claim his discharge at any time by giving three months' notice.

Yes; a non-commissioned officer, *who extends his army service for the residue unexpired of his original term*, can re-engage and continue to serve after twenty-one years the same as a soldier, but subject to the approval of Secretary of State or other authority.

If, at the time a soldier's term of service expires, or he is entitled to go to the reserve, a war exists between England and a foreign power, or a proclamation has been issued calling on men to continue in the army, or the reserve to re-enter the service, he

A Summary of Military Law.

60. A.A. 87. State the circumstances under which a soldier's service can be prolonged without his consent.

61. A.A. 87 (clauses 3 and 4). In case of war, how can a soldier's service (under Act 87) be prolonged at his desire ?

62. A.A. 88. In case of imminent national danger, what powers has Her Majesty under the 88th section of the Army Act ?

63. A.A. 89. When can a soldier be transferred to the reserve ?

A Summary of Military Law.

(the soldier) may be detained a year. At the expiration of that time (or before it expires) he is transferred to reserve, or discharged with all convenient speed.

A soldier who has served the required twelve months, and is entitled to be discharged, can (if the war still continues, and he desires it), with the approval of the competent military authority, be allowed to do so until the war ends or he claims his discharge, having previously given three months' notice.

In the above case he must make a declaration before his commanding officer.

In case of imminent danger or great emergency, Her Majesty, by proclamation (to be notified in Parliament, if sitting), may order those who are entitled to join the reserve to continue to serve in army service, or to call out for permanent service any man who has entered the reserve.

A soldier may be transferred to the reserve by competent military authority—

(1) When he has been invalided from service abroad.

(2) When his corps, or portion thereof, is ordered abroad, and he is medically unfit, or within two years of his term of service.

A Summary of Military Law.

64. A.A. 90. Give the purport of the five clauses of section 90, Army Act, referring to a soldier's discharge or transfer to reserve.

65. A.A. 92. What is given to every soldier at the time of his discharge?

A Summary of Military Law.

(1) When the term of a soldier's original enlistment or re-engagement expires, he shall be discharged with all convenient speed, unless detained by reason of any of the contingencies mentioned in previous sections. Until discharged (although his time is up), he is still under the Army Act.

(2) If his term expires abroad, he can claim a free passage to England ; but if he stays abroad *at his own request*, he cannot subsequently demand to be sent home at the public expense.

(3 and 4) Every soldier, on the expiration of his term of army service, is transferred to reserve, and, if serving abroad, is sent home free of expense, but, until so transferred, is under Army Act as a soldier of the regular forces.

(5) When a soldier completes his original or re-engaged term of service, or is transferred to reserve, he is entitled to be conveyed free of cost to the place where he was attested, or to any place (not incurring greater cost) at which he decides to take up his residence.

A certificate of discharge, stating his service, conduct, character, and cause of discharge, is given to every soldier of the regular forces when he is discharged, for whatever reason he is discharged.

A Summary of Military Law.

66. A.A. 99. If a recruit at his attestation, or an attested soldier, gives a false answer, how can he be dealt with?

67. A.A. 105. Who are entitled to be billeted?

68. A.A. 122. How are general courts-martial convened, and to whom may authority be delegated to convene or to confirm them?

A Summary of Military Law.

In the first case, on summary conviction, he is liable to imprisonment, with or without hard labour, not exceeding three months. In the second case, at discretion of commanding officer, he can either be tried by summary jurisdiction or by court-martial.

(1) All officers and soldiers of Her Majesty's regulars ; (2) all horses belonging to Her Majesty's regulars ; (3) all horses belonging to officers of such forces for which forage is allowed by regulation.

Her Majesty may *by warrant* convene a general court-martial, or authorise any qualified officer either to do so or to delegate authority to any officer under his command not below the rank of a field officer.

If it appears to Her Majesty that, in any place out of the United Kingdom, hardship would be inflicted on persons accused of offences by serious delay, she may allow the convening of a general court-martial to be delegated to a captain.

The same officer may or may not be appointed convening and confirming authority.

Her Majesty may grant power to any officer, whether convening officer or not, to confirm the finding and sentence of a general court-martial, or to delegate that authority, subject or not to restriction.

A Summary of Military Law.

69. A.A. 123. Who can convene or confirm a district court-martial, or empower another person to do so?

70. A.A. 124. Can any person who has been tried by a court-martial demand a copy of the proceedings?

71. A.A. 125. How are court-martial witnesses summoned, and what privileges have they?

72. A.A. 126. How are civilian witnesses dealt with who are guilty of misconduct, perjury, or insulting or threatening language at a trial by court-martial?

A Summary of Military Law.

Any officer or person authorised to convene a general court-martial can convene and confirm a district court-martial, or empower any person under his command not below the rank of captain to do so, subject to such restrictions as may seem meet to the officer granting such power.

Yes ; any time within seven years for a general, and three years for any other sort of court-martial, he may demand that a copy of the proceedings, including those of revision (if any) and of confirmation, be furnished him, on payment at the rate of twopence for every folio of seventy-two words.

(1) Every person can be summoned or ordered to attend in the prescribed manner.

(2) Every person attending as a witness has the same privilege from arrest as in superior civil courts.

(1) If a civilian fails to attend after being summoned, and tendered or paid his reasonable expenses ;

(2) Being present, refuses to take required oath ; refuses to produce document legally required ; refuses to answer required legal question, the president may certify the offence in writing to a court of law qualified to try such offence. It is enquired into, and he (the

A Summary of Military Law.

72. A.A. 126. How are civilian witnesses dealt with who are guilty of misconduct, perjury, or insulting or threatening language at a trial by court-martial?

73. A.A. 128. Are the rules of evidence on courts-martial the same as in civil courts?

74. A.A. 132. Name the duties of the governor of a prison as regards receiving prisoners, deserters, or absentees without leave.

75. A.A. 137. State the penal stoppages that can be made from the ordinary pay of an officer.

A Summary of Military Law.

witness) is punished as if he had so conducted himself before *that* court.

Perjury—If guilty of perjury, he shall be punished as if he had perjured himself before a civil court.

Using threatening language, insulting, or causing interruption or disturbance, he is treated in the same manner as in above cases.

Yes ; and no person shall be required to produce any document or answer any question that would not be required by a civil court for a like offence.

The governor of a prison in the United Kingdom, or of one under similar rules in India or the colonies, shall receive prisoners, deserters, or absentees without leave on production of the required warrant or order from proper authority, and such order shall be in force till prisoner reaches his destination.

He shall also receive, up to seven days, any prisoner, by order of his commanding officer.

This applies to any person in charge of police stations or other similar places.

(1) The ordinary pay for the days he is absent without leave, or overstays his leave, unless he satisfactorily explains his absence to his commanding officer and to the Commander-in-Chief.

A Summary of Military Law.

75. A.A. 137. State the penal stoppages that can be made from the ordinary pay of an officer.

76. A.A. 138. What penal deductions may be made from a soldier's ordinary pay ?

A Summary of Military Law.

(2) The sum required to make good any expense, loss, damage, &c., caused by the commission of an offence of which he is convicted by court-martial.

(3) The amount of pay of an officer or soldier which he has unlawfully retained or refused to pay.

(1) His pay for every day of absence, either on desertion, or without leave, or as prisoner of war—for every day of imprisonment, either by sentence of civil court, court-martial, or by commanding officer, or by officer commanding a ship—for every day he is detained and subsequently convicted by civil court or court-martial, or summarily punished by his commanding officer.

(2) For every day in hospital from sickness caused by offence under Army Act.

(3) Sum to make good expenses, &c., awarded by court-martial, or by commander of one of Her Majesty's ships, or under Act 71, as may be awarded by competent military authority after confession of offence.

(4) Sum to make good arms, ammunition, clothing, &c., awarded by commanding officer, by court-martial, or by commander of one of Her Majesty's ships.

(5) Sum to make good stoppages due to any part of auxiliary forces to which he belonged at time of enlistment, or which he is liable to pay.

(6) Liquor ration stopped by commanding officer, not exceeding a penny a-day for twenty-eight days.

A Summary of Military Law.

76. A.A. 138. What penal deductions may be made from a soldier's ordinary pay ?

77. A.A. 140. What constitutes a day when reckoning absence or imprisonment ?

78. A.A. 144. When are regular soldiers liable to be taken out of the service by civil process ? Give the proviso.

79. A.A. 148, 149, 150. Where are Courts of Request assembled ? How are they composed, and for what purpose are they required ? Also, give their powers.

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(7) Sum to pay fine awarded by court-martial, by his commanding officer, or by civil court.

(8) Sum ordered by Secretary of State for maintenance of his wife, child, or bastard child, or their relief.

Provided that, after paying messing and washing, he has not less than a penny a-day, or that he is put under stoppages for a larger sum than is actually required to make good expense, fine, &c.

A day must be six hours either wholly in one day or partly in one and partly in another, or unless absence prevented military duty being fulfilled, and it was thereby thrown on another person.

(1) On account of a charge or conviction of crime.

(2) On account of any debt, damage, or sum of money exceeding £30 over and above all costs.

Provided that any soldier may be proceeded against by civil court, and execution marked for any cause or suit of which he has received notice to appear.

In India, beyond the jurisdiction of a court of small causes—composed of military officers only—actions for debt not exceeding £40 (400 rupees), and all personal actions against officers and other persons

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79. A.A. 148, 149, 150. Where are Courts of Request assembled? How are they composed, and for what purpose are they required? Also, give their powers.

80. A.A. 152. What punishment can be awarded any person who falsely represents himself to be a deserter from Her Majesty's service?

A Summary of Military Law.

subject to military law (except soldiers of regulars), are cognisable before such courts. No action can be taken by an officer or soldier of regular forces against an officer of regulars before a Court of Request.

These courts can be assembled by any officer in charge of any post, camp, &c. If there are not officers enough at defendant's station, the officer commanding district may order one to be held at the nearest station. It should consist of five (not less than three) officers, each of whom has been commissioned five years. President—field officer, if possible—never less than captain. Proceedings as in court-martial. President, members, and witnesses are sworn. On proof of debt or damage, they can order execution or stoppage of one-half pay or allowances, or payment by instalments. In default of payment, commanding officer may order sale of goods (except articles of military equipment) within the district. If debtor is not in receipt of pay from public department, commanding officer may imprison him for two months, or till the debt is paid, if within that time.

Any person who falsely represents himself to any military, naval, or civil authority to be a deserter, shall, on summary conviction, be sentenced to imprisonment, with or without hard labour, not exceeding three months.

A Summary of Military Law.

81. A.A. 153. How is a person punishable who induces a soldier to desert, or aids or conceals him?

82. A.A. 154. When a person is reasonably suspected of being a deserter from the army, what course of proceeding with regard to him is authorised by the Army Act?

83. A.A. 156. How can a person be punished who buys, exchanges, takes in pawn, or entices any soldier to sell, &c., or assists a soldier to sell, &c., his arms, equipments, clothing, necessaries, &c.?

A Summary of Military Law.

On summary conviction, he can be sentenced to six months' imprisonment, with or without hard labour.

(1) If reasonably suspected of being a deserter, a constable shall apprehend him. If there is no constable, an officer or soldier shall do so. In either case, he should forthwith be brought before a court of summary jurisdiction, and be dealt with as if for an indictable offence.

(2) If the court, either by evidence on oath or confession, is satisfied that he is a deserter, they shall have him placed in safe custody till they can deliver him over to the military authorities.

(3) If the person confesses himself to be a deserter, and there is no proof one way or other, the court shall remand such person from time to time for periods of eight days, and, if in United Kingdom, send a descriptive return to the Secretary of State; if elsewhere, to the general commanding the forces.

For the descriptive return, the clerk of the court is entitled to a fee of 2s., which the Secretary of State directs to be paid.

For a first offence, on summary conviction, he is liable to a fine not exceeding £20, together with treble the value of the property.

For a second offence, to a fine not less than £5 or

A Summary of Military Law.

83. A.A. 156. How can a person be punished who buys, exchanges, takes in pawn, or entices any soldier to sell, &c., or assists a soldier to sell, &c , his arms, equipments, clothing, necessities, &c. ?

84. A.A. 157. Can a person who has been acquitted or convicted by court-martial be again tried for same offence by court-martial ?

85. A.A. 158. A person commits an offence while his corps is under military law ; it has since ceased to be so. How can he be dealt with ?

86. A.A. 159. Can an offender who commits an offence at one place be tried for it at any other place ?

A Summary of Military Law.

more than £20, together with treble the value of the property; or to imprisonment, with or without hard labour, for a term not exceeding six months.

No.

A person who committed an offence while his corps was under military law, although it has ceased to be so, is still liable to be tried if he has been taken into military custody; but unless his trial commences within three months after he has ceased to be under military law, he can only be tried for mutiny, desertion, or fraudulent enlistment.

A person sentenced to penal servitude or imprisonment is subject to the Army Act for the period he is awarded, although he has been discharged or dismissed the service, or has ceased to be under military law.

Any person who commits an offence in any part of Her Majesty's dominions, can be tried for it at any place where the officer commanding is authorised to convene general court-martial.

A Summary of Military Law.

87. A.A. 161. What is the limit of time after which a soldier cannot be tried except for certain offences? Name the latter, and how the offence is sometimes condoned.

88. A.A. 162. What is meant by the term "adjustment of military and civil law"?

89. A.A. 164. When a person subject to military law has been tried by the civil power, how is a record obtained?

A Summary of Military Law.

Three years, except for mutiny, desertion, or fraudulent enlistment. Condoned by three years' continuous exemplary service, except in case of desertion on active service ; but in the case of fraudulent enlistment, although an offender would not be tried after three years' continuous exemplary service, he would nevertheless forfeit all service prior to such enlistment.

If a person has been sentenced by court-martial for an offence, and is subsequently tried by civil power, regard must be paid to the punishment he has undergone.

If an officer neglects or refuses to give up to civil authorities anyone under his command, or wilfully obstructs, neglects, or refuses to assist constables in apprehending anyone under his command, he shall, on conviction, be guilty of a misdemeanour.

Any person acquitted or convicted by civil power cannot be tried by court-martial for same offence.

On application by the offender's commanding officer, the clerk of the court or his deputy shall forward a certificate showing the offence and judgment, and such certificate shall be sufficient evidence of conviction or acquittal of the prisoner. A fee of 3s. can be demanded.

A Summary of Military Law.

90. A.A. 165. Can the original proceedings of a court-martial be admitted as evidence?

91. A.A. 173. How should a soldier on furlough proceed who is detained by sickness or other casualty, rendering an extension of such furlough necessary, whether he be in the locality of a garrison town or not?

92. A.A. 175, 176. What persons are subject to military law?

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Yes; the proceedings, signed by the president and in the custody of the Judge-Advocate-General, or any copy thereof on production from such custody, shall be considered proof (without the signature of such Judge-Advocate being proved), and the Secretary of State may, by warrant, state that the offender has been convicted and sentenced by court-martial.

If there is no officer of the rank of captain or of higher rank doing duty at the place, he shall communicate with a justice of the peace, who, if satisfied of the necessity, may grant an extension of furlough for one month, and certify such extension, with the cause thereof, to the soldier's commanding officer or to the Secretary of State.

Always—(1) Commissioned officers of regulars on full pay.

(2) Commissioned officers of militia.

(3) Commissioned officers of colonial troops raised by Her Majesty's order and commanded by an officer of regulars.

(4) All men attested, and paid as soldiers.

(5) Permanent staff of militia, yeomanry, and volunteers, both officers and men.

At stated times—(1) Officers and men of marine forces when not subject to Naval Act.

A Summary of Military Law.

92. A.A. 175, 176. What persons are subject to military law?

93. A.A. 178. When the auxiliary forces or pensioners are subject to military law under this Act, have they the same status as regulars?

94. A.A. 182. State the special provisions as to a warrant officer.

A Summary of Military Law.

(2) Officers, not otherwise under military law, authorised to accompany troops on service.

(3) Camp followers, authorised or not.

(4) *Reserve forces*—

Army reserve, class 1, }	When called out
Militia reserve, }	for general service.
Army reserve, class 2—called out in United Kingdom.	

(5) *Auxiliary forces*—Non-commissioned officers and men of *Militia* during training, when attached to regulars, when embodied. *Yeomanry*, when training, attached to regulars, on military service, or aiding civil power. *Volunteers* training or exercising with regulars or militia, when under military law, when on actual military service.

Yes; the officers, non-commissioned officers, and men are treated in every way as regulars during the time they are embodied.

(1) He shall not be punished by his commanding officer, or tried by regimental court-martial, or sentenced by district court-martial to any punishment not mentioned in this section.

(2) Without prejudice to other power of court-martial, he may be sentenced by court-martial (*other than regimental court-martial*) to dismissal, suspension

A Summary of Military Law.

94. A.A. 182. State the special provisions as to
a warrant officer?

95. A.A. 183. State the special provisions as to
non-commissioned officers.

A Summary of Military Law.

of rank, pay, or allowances for any period, or any other place in the list of his rank, or reduction to an inferior class (if any); or, if originally a soldier, and transferred to serve as a warrant officer, in *that* case to be reduced to a lower grade or to the ranks, or to be transferred to a corps in the same branch of the service, and in same rank as he held before transferred as warrant officer.

(3) A warrant officer reduced to the ranks shall not serve as a soldier.

(4) The president of a court-martial to try a warrant officer shall not be under the rank of captain.

(1) A non-commissioned officer can be tried by any sort of court-martial, and, if sentenced to imprisonment or penal servitude, shall be deemed to be reduced to the ranks.

(2) A non-commissioned officer cannot be summarily dealt with by his commanding officer for drunkenness.

(3) The Commander-in-Chief at home or in India, or the Commander-in-Chief of a presidency, can reduce a non-commissioned officer to a lower grade or to the ranks.

(4) A non-commissioned officer can be reduced by court-martial to a lower grade or to the ranks, either in addition to or without other punishment, in respect of an offence.

A Summary of Military Law.

96. A.A. 183. (*a, b*) How can an army school-master be punished?

97. A.A. 183 (*c*). How can an *acting* non-commissioned officer be dealt with?

98. A.A. 184. If a person under military law, but not belonging to Her Majesty's forces, commits an offence under the Army Act, how can he be dealt with?

RULES OF PROCEDURE.

99. R.P. 2. What is the limit of time that a prisoner can be in custody before his commanding officer investigates the charge?

A Summary of Military Law.

(1) An army schoolmaster can be sentenced by court-martial to penal servitude or imprisonment, or to a lower grade or to dismissal. If sentenced to penal servitude or imprisonment, he shall be deemed to be dismissed. *Cannot be reduced to the ranks.*

(2) An army schoolmaster can be dismissed by Commander-in-Chief, or in India by Commander-in-Chief of Forces or Commander-in-Chief of any presidency.

His commanding officer, either for offence or otherwise, can order him to revert to his permanent grade, if he has one ; if not, to the ranks.

He can be tried and punished by a court-martial (other than regimental court-martial), convened by an officer authorised to convene such description of court-martial.

RULES OF PROCEDURE.

Unless impracticable (in which case a report shall be made to the officer commanding station), a soldier shall not be more than forty-eight hours without his case being enquired into ?

A Summary of Military Law.

100. R.P. 3. How is a charge against a soldier heard?

101. R.P. 4. Can a commanding officer dismiss a charge?

102. R.P. 4 (2, 3). How does a commanding officer dispose of a case?

103. R.P. 5. What is the procedure and summary of evidence on remand for trial by general or district court-martial?

A Summary of Military Law.

(1) In presence of accused, who can cross-examine, make any statement, or call any witnesses.

(2) If absent without leave for more than seven days, the accused can demand that all witnesses be sworn. This is done by investigating officer, or a solemn declaration (similar to that allowed on court-martial) is made.

Yes, if he considers no offence has been committed under Army Act, 1881, or if, in his discretion, he thinks the charge ought not to be proceeded with.

(1) On enquiry, if he thinks the charge ought to be proceeded with, he either disposes of the case summarily, or remands the accused for trial by court-martial, or refers matter to superior military authority.

(2) If accused is remanded for trial by court-martial, he shall order a court-martial to assemble, or apply to proper military authority to convene one. This delay not to exceed thirty-six hours.

The evidence of the witnesses (who were before the commanding officer) is taken down in a narrative form before the commanding officer, or an officer appointed by him, in presence of the prisoner, who, if there is any variance in the evidence then stated and that given

A Summary of Military Law.

103. R.P. 5. What is the procedure and summary of evidence on remand for trial by general or district court-martial?

104. R.P. 6. When does imprisonment awarded by a commanding officer begin?

105. R.P. 7. When has a soldier a right to demand a court-martial instead of punishment awarded by his commanding officer?

A Summary of Military Law.

previously before the commanding officer when he investigated the offence, can question them. Each witness's evidence is read to and signed by him, and any statement by the prisoner material to him is added. On perusing this summary of evidence, the commanding officer can either apply for a court-martial or dispose of the case summarily. This summary of evidence is to be laid before the court-martial, if one is assembled. The prisoner is entitled to a copy, on payment or gratis, if commanding officer thinks fit so to order. If he does not obtain a copy, he may inspect the one laid before the court.

If in days, from date of award. If in hours, from time prisoner is received at provost prison, &c. If not sooner received, shall begin on day after award, at hour fixed for reception or release of prisoners. *No commanding officer can increase a punishment once awarded.*

A soldier ordered by his commanding officer imprisonment or fine or deprivation of pay, shall have a right to demand a district court-martial instead of his commanding officer's award. If he does not specify a district court-martial, he may be tried by a regimental. It is the duty of the commanding officer to inform the prisoner of his right, and ask him if he wishes to be tried.

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106. R.P. 8. When an officer is charged with an offence under the Army Act, what is done?

107. R.P. 9. What does a charge-sheet contain?

108. R.P. 10. What does a charge-sheet begin with?

109. R.P. 11. What is the rule as regards the contents of a charge?

A Summary of Military Law.

An investigation is held, and evidence taken in writing in his presence, in the same manner as in the case of a soldier.

When ordered to be tried by court-martial, and the above investigation has not been taken, an abstract of the evidence shall be handed him gratis twenty-four hours before trial, and shall be laid before the court.

(1) A charge-sheet contains the whole issue or issues to be tried by court-martial at once.

(2) A charge means an accusation contained in a charge-sheet, that a person liable to military law has been guilty of an offence.

(3) A charge-sheet may contain one or more charges.

In the case of an officer, his name, rank, and corps.

In the case of a soldier, his number, name, and corps.

In the case of anyone at the time not belonging to the regular forces, a description of him, or an averment that he is amenable to military law.

Each charge shall state one offence only, and in *no case* should an offence be stated in the alternative in the *same* charge.

A Summary of Military Law.

100. R.P. 11. What is the rule as regards the contents of a charge?

110. R.P. 12. When is a charge-sheet invalid from a mistake in the name or description of the person charged?

120. R.P. 13. What facilities must be afforded a prisoner, for whose trial a court-martial has been ordered, to enable him to prepare his defence?

130. R.P. 14. What facilities must be afforded a prisoner before he is brought before a court-martial?

A Summary of Military Law.

Each charge is divided into a statement and particulars.

The *statement* should be in *exactly* the words of the Army Act, unless a civil offence, when it should clearly describe the offence.

The *particulars* should contain everything necessary to explain the offence. The place and date should be stated, and it may contain wholly or partly a reference to the particulars in another charge.

If any deduction from ordinary pay is required to be awarded, the particulars should state the fact.

If he objects to the charge-sheet during trial, and it is shown that injustice has been done him.

A prisoner, to be tried by court-martial, should have proper opportunity to prepare his defence, and be allowed free communication with his witnesses, and with any friend for legal advice.

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A Summary of Military Law.

112. R.P. 14. What information should be given a prisoner before he is arraigned, and what interval must elapse before arraignment?

113. R.P. 15. Can any number of prisoners be tried together for an offence charged to have been committed by them collectively?

114. R.P. 16. When shall a regimental court-martial be ordered to assemble?

115. R.P. 17. What is the duty of an officer on convening a court-martial?

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(2) At the time mentioned above, he shall be given a copy of the charges, which shall be explained to him (if a soldier), or read if he is illiterate.

(3) A list of the names, rank, and corps of the president, members, or members-in-waiting should be given the prisoner, also the names of witnesses for the prosecution.

Yes ; but information to that effect must be given to each prisoner, and should any one of them desire the evidence of another for his defence, the convening officer or court, if satisfied that the evidence is material, shall try such prisoner separately.

As soon as seems practicable to the convening officer, after the commanding officer has investigated the charge which the court-martial is to try. In no case should more than thirty-six hours elapse.

(1) He should satisfy himself that the offence is under the Army Act, and that the evidence is sufficient. If in doubt, he should either release the prisoner or refer the case to superior authority.

(2) He should satisfy himself that the court-martial he convenes is of a correct sort.

(3) He should report to Commander-in-Chief, if

A Summary of Military Law.

115. R.P. 17. What is the duty of an officer on convening a court-martial?

116. R.P. 18. Before a prisoner is arraigned, if the officers detailed are, from non-eligibility, challenge, or otherwise, not all able to serve, what course is adopted?

117. R.P. 19. What officers are ineligible for serving on ordinary courts-martial? also state those who are disqualified.

A Summary of Military Law.

more than fifteen days in United Kingdom, or thirty days elsewhere, have elapsed between his being applied to, and his convening either a general or district court-martial.

(4) He shall appoint the officers to form court, also the waiting members.

(5) He shall send to the president the original charge-sheet and summary of evidence.

(1) When some of the officers on a court-martial are, from non-eligibility, disqualification, challenge, or otherwise, unable to serve, it is *usual* to adjourn ; but if not below legal minimum, and it is inexpedient to adjourn, the trial may proceed. In that case, the reasons for so doing must be stated.

(2) If new president or members are required, convening officer may convene new court.

If not subject to military law—for regimental court-martial, those under a year's service ; for district court-martial, those of less than two years' service ; and for general court-martial, those under three years' service, are ineligible.

The following officers are *disqualified* for serving :—

(1) Convening officer.

(2) Prosecutor, or witness for prosecution.

A Summary of Military Law.

117. R.P. 19. What officers are ineligible for serving on ordinary courts-martial? also state those who are disqualified.

118. R.P. 20. In general and district courts-martial, should the members be of different corps?

119. R.P. 21. State the rule as to the rank of members of court-martial.

120. R.P. 22. A court-martial being assembled, and the convening order and names of president and members having been read, what is the first duty of the court to ascertain?

A Summary of Military Law.

(3) Officer who investigated charges or was on prisoner's court of inquiry.

(4) Prisoner's commanding officer.

(5) Anyone having a personal interest in the case.

Yes ; they never should be all from the same corps, unless others are not available, or cannot be obtained in time. Then the convening officer must state the fact when convening the court.

When the prisoner belongs to the auxiliary forces, if practicable, two of the members should belong to the auxiliary forces, and one or both to the branch to which prisoner belongs.

(1) In a general court-martial, there must be five members, at least, *not below* the rank of captain.

(2) Unless not available (to be so stated by convening officer), every member shall be of equal, if not superior, rank to prisoner.

(3) No member should be under the rank of captain for the trial of field officer.

(1) That the court is convened according to the Army Act and Rules of Procedure.

(2) That the court consists of required number of members.

A Summary of Military Law.

120. R.P. 22. A court-martial being assembled, and the convening order and names of president and members having been read, what is the first duty of the court to ascertain?

121. R.P. 23. Ought the members of a court-martial to enquire into the validity of the charges?

122. R.P. 25.
the officers on his

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A Summary of Military Law.

(3) That each of the officers is eligible, and not disqualified for serving on *that* court-martial.

(4) That the president is of proper rank, and duly appointed.

(5) If a general court-martial, that the officers are of the required rank.

(6) If a general or district court-martial, and a Judge-Advocate has been appointed, ascertain that he is duly appointed and qualified.

(7) If not satisfied on these points, they should adjourn, and report to convening officer.

Yes ; they should see that the charge is laid against a person under military law, and under the jurisdiction of the court. Also, that the charge discloses an offence under the Army Act, and is properly framed and clearly worded.

If not, they should adjourn, and report to convening authority.

With the exception of the prosecutor or Judge-Advocate, the prisoner can object to any of the officers on his court-martial, and may call witnesses to support his objection.

If more than one officer is objected to, the objection to the lowest in rank is first enquired into, and all the other officers present shall vote on the disposal of

A Summary of Military Law.

122. R.P. 25. Can the prisoner object to any of the officers on his court-martial?

123. R.P. 26. How are the officers composing a court-martial sworn?

124. R.P. 31, 32. The members having been sworn, what is the next step to be taken?

125. R.P. 33. Can a charge-sheet be amended during trial?

A Summary of Military Law.

such objection, notwithstanding that objections have been made to any of those officers. In case of a *member*, if one-half of court are in favour of the objection, he must retire, and be replaced by a waiting member, who can also be challenged. If no waiting member, the court shall act as laid down in Rule 18.

If the president is challenged, one-third of the court must be for objection, or it does not hold good. If allowed, the court adjourn, and report to the convening officer, who appoints the senior member, if of sufficient rank, or another officer, president.

If there is a Judge-Advocate, he first swears the president and then the members. If no Judge-Advocate, then the president swears the members, and the president is sworn by one of the members.

The charges are read, the witnesses withdraw, and the prisoner is required to plead separately to each. He can object to the charge or charges, on the ground that the offence is not under Army Act, or in accordance with Rules of Procedure.

The court can alter any mistake in name or description of the prisoner, provided the prisoner does not suffer injustice thereby.

A Summary of Military Law.

125. R.P. 33. Can a charge-sheet be amended during trial?

126. R.P. 34. Can a prisoner, before pleading to a charge, offer a special plea to the jurisdiction of the court?

127. R.P. 35. What is the rule as to the plea of "guilty" or "not guilty" by the prisoner?

128. R.P. 36. State the procedure after the prisoner has pleaded "guilty" or "not guilty."

A Summary of Military Law.

Before any witness is examined, the court may report any omission in charge-sheet to convening officer, who can convene new court, amend charges, or order trial to proceed.

Yes, and the court should receive evidence from prisoner in proof, and also from the prosecutor, to disprove the special plea.

If plea is overruled, the trial proceeds; but if allowed, the court adjourns, and reports to convening authority.

If in doubt as to validity of plea, the court ought to refer matter to convening authority.

If he pleads unintelligibly or refuses to plead, "not guilty" is recorded.

Before recording plea of guilty, the court should see that the prisoner understands his plea.

(1) If the plea of "guilty" is recorded, the court, before the finding, shall receive a statement from the prisoner and alter the plea to "not guilty," if they think fit.

(2) If the prisoner pleads "not guilty" to some of the charges, those charges are proceeded with, unless *alternative* ones. In that case the court can proceed

A Summary of Military Law.

128. R.P. 36. State the procedure after the prisoner has pleaded "guilty" or "not guilty."

129. R.P. 38. After a plea of "not guilty" to any charge is recorded, how does the trial proceed?

A Summary of Military Law.

with *all* the charges, or enter a finding of "not guilty" on each alternative charge to which the prisoner has not pleaded guilty.

(3) If a plea of "guilty" is recorded on all the charges, a general court-martial or a district court-martial, after recording the finding of "guilty," should read the summary of evidence and annex it to the proceedings. The prisoner can then call witnesses as to character, or make statement in mitigation of punishment, but no other address is allowed.

(4) In a regimental court-martial, in a case similar to that mentioned in the last paragraph, the court act in the same manner, except that, instead of the summary of evidence being read, sufficient evidence is taken to determine the sentence and allow confirming officer to know all the circumstances.

(5) If anything stated by the prisoner in mitigation requires proof, the court should permit witnesses to be called.

R.P. 37. The prisoner can, during trial, withdraw plea of "not guilty," and plead "guilty" instead.

The prosecutor makes his opening address, and at its conclusion, if he wishes to give evidence for the prosecution, he must *then* do so on oath and in detail.

He can be cross-examined by the prisoner.

The evidence for the prosecution is then taken.

The prisoner can cross-examine.

A Summary of Military Law.

130. R.P. 39. The prosecution having closed, what is the next step taken on a court-martial ?

131. R.P. 42. How do the officers composing a court-martial come to a finding ?

A Summary of Military Law.

If the prisoner has no witnesses other than those as to character—

(1) The prosecutor makes a second address to sum up prosecution evidence.

(2) The prisoner is asked for his defence, and can address the court.

(3) The prisoner can call his witnesses as to character.

(4) The prosecutor may produce, in reply to witnesses as to character, proof of former convictions, and entries in Defaulters' Book.

R.P. 40. If the prisoner has witnesses for defence in addition to those as to character—

(1) The prisoner is asked for his defence, and can address the court.

(2) The prisoner calls his witnesses, including those as to character.

(3) After *all* the witnesses for defence have been heard, prisoner can make a second address.

(4) The prosecutor can address court in reply.

R.P. 41. If necessary, the Judge-Advocate sums up. After this, no other address is allowed.

The court deliberate on their finding in closed court, and the opinion of each member is taken separately on each charge, commencing with the junior member. An equality of votes acquits the prisoner.

A Summary of Military Law.

132. R.P. 43. How is the finding recorded?

A Summary of Military Law.

The finding on *every* charge will be recorded either as "guilty," "not guilty," or "not guilty, and honourably acquit him of the same."

If the entire substance of the charge is not proved, they may record a *special* finding instead of one of not guilty. This *special* finding can find a prisoner guilty on a charge, subject to the exceptions and variations annexed to the finding. For instance, if a man was charged with desertion, and the prosecution failed to prove the intention of the man to desert, the court might find that the man was not guilty of desertion, but was guilty of "absence without leave."

The court should acquit the prisoner if the facts proved do not disclose an offence under the Army Act. If doubtful on the point, they can adjourn for the opinion of the confirming authority before recording a finding. In alternative charges, if the court are in doubt as to which of the offences the prisoner ought to be found guilty of, they can adjourn and refer to the confirming authority, or record a special finding, stating the facts proved, and that they are in doubt of which charge to find him guilty. Or a prisoner may be found guilty of neither of the charges, but may be convicted of an offence contained in two or more of them. For instance, a soldier charged with—

- (1) making away with by selling his arms ;
- (2) making away with by pawning his arms ;

A Summary of Military Law.

132. R.P. 43. How is the finding recorded ?

133. R.P. 45. If the prisoner is found *guilty*, what is the next step taken on a court-martial ?

134. R.P. 46. In what manner is forfeiture of seniority of rank awarded an officer by sentence of a court-martial ?

A Summary of Military Law.

if the evidence failed to prove either of these offences, a special finding might (if the evidence justified it) be found that the man was not guilty of either charge, but was guilty of "losing by neglect his arms."

R.P. 44. If found *not guilty* of each charge, the president dates and signs the proceedings. The finding is announced in open court, and the prisoner released.

The proceedings are then signed by Judge-Advocate (if any), and transmitted as if they required confirmation.

A witness, on oath (not a member of the court), is called to give evidence of the prisoner's character, age, service, rank, and length of time in arrest or confinement for previous sentence ; also, any deferred pay, military decoration, or reward which he can be sentenced to forfeit. *This evidence* can be given by a summary from the regimental books, which *must* be compared with the original, if required by the prisoner, who can also call witnesses to rebut, or he can cross-examine the witness.

The court can post-date his commission in his corps, or the army, or both.

A Summary of Military Law.

135. R.P. 47. How is the sentence of a court-martial awarded?

136. R.P. 48. How can the court recommend a prisoner to mercy?

137. R.P. 49. Sentence having been awarded, what is the next step on a court-martial?

138. R.P. 50. What are the powers of the confirming authority?

A Summary of Military Law.

The court awards one sentence for *all* the charges of which the prisoner is found guilty.

If the court recommend a prisoner to mercy, or to have his service restored under sect. 79, Army Act, they must give their reasons for such recommendation. The number of votes for or against may be recorded.

The president dates and signs the proceedings, which, after being signed by the Judge-Advocate (if any), are *at once* transmitted for confirmation.

(1) To confirm the proceedings wholly or in part, or refuse confirmation and add remarks.

(2) To send back the finding and sentence, or the sentence only, for revision, stating his reasons for such revision.

(3) To commute, mitigate, or remit the sentence or any part of it.

(4) To withhold confirmation for a time.

(5) To refer the case to superior authority for confirmation.

(6) To correct any slight error or informality in the manner or wording in which the finding or sentence is expressed.

A Summary of Military Law.

138. R.P. 50. What are the powers of the confirming authority?

139. Define *to remit*, *to mitigate*, and *to commute*.

140. R.P. 51. How does the court act when the finding or sentence is sent back for revision?

A Summary of Military Law.

(7) If the court has awarded a sentence in excess of what the confirming authority has power to confirm, he may reduce the sentence to such as he has authority to confirm.

The president or prosecutor can *never* confirm, and a member only in one instance (summary court-martial, when the member would have been otherwise qualified, and delay is impracticable).

To remit means to forgive; *to mitigate* is to reduce in amount; and *to commute* is to substitute.

No revision can be entered into unless in the absence of the president or officiating Judge-Advocate, or if the court is below the legal minimum.

The court re-assemble in closed court, and the minute of the confirming officer is read and attached to the proceedings. The court does not take fresh evidence.

When the *finding* is sent back for revision, the court can revoke the finding and sentence, record a new finding, and award a fresh sentence if necessary, but in no case shall a sentence be increased.

When the *sentence alone* is sent back for revision, the court shall *not* revise the finding.

The revised proceedings, dated and signed by the president and Judge-Advocate (if any), are at once

A Summary of Military Law.

138. R.P. 50. What are the powers of the confirming authority?

139. Define *to remit*, *to mitigate*, and *to commute*.

140. R.P. 51. How does the court act when the finding or sentence is sent back for revision?

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140. R.P. 51. How does the court act when the finding or sentence is sent back for revision?

141. R.P. 53. When the finding of a court-martial is only partially confirmed, how can the sentence be mitigated?

142. State any reasons that would render a conviction invalid.

A Summary of Military Law.

transmitted for confirmation ; but the sentence, when confirmed, commences from the date of the original signing of the proceedings.

R.P. 52. The charge, finding, sentence, and confirmation are promulgated as directed by the confirming authority or custom of the service.

When the confirming authority confirms only the finding on *some* of the charges, he may mitigate, remit, or commute the punishment awarded to make it a just one for the offence.

Where a sentence has been awarded and confirmed, but a charge or finding has been found invalid, the proper authority may remit or commute the punishment to make it a fair one for the offence.

O'Dowd, in his "Practical Hints to Courts-Martial," lays down that the rejection of evidence tendered by a prisoner in his defence would almost necessarily render a conviction invalid ; so would undue restriction of a prisoner in cross-examination. Without strong proof that the evidence tendered in the one case and the questions put in the other are quite irrelevant (using the word relevant in its widest sense), a court is liable to grave error in rejecting either. A question in itself apparently having no

A Summary of Military Law.

142. State any reasons that would render a conviction invalid.

143. R.P. 54. Where a court-martial has recorded a special finding, but the confirming or other authority is of a different opinion, what course can be adopted?

144. R.P. 55. If the sentence of a court-martial is improperly expressed, or in excess of the punishment authorised by law, what course should be adopted by the confirming authority?

A Summary of Military Law.

connection, or at best only a remote one, with the issue, may lead up to matter material to the defence.

The fact of a prisoner being unduly restricted in his defence has been always pronounced fatal to the legality of the proceedings.

If the confirming authority is of opinion that the facts constitute in law the offence charged in any of the alternative charges, he may confirm the finding, and declare that it amounts to a finding of guilty on such and such a charge ; but if it is subsequently declared by superior authority to constitute in law the offence contained in one of the other alternative charges, the finding will still be valid, and he can change the finding to one of guilty on the charge stated by superior authority.

In that case the sentence will hold good, unless the offence he is found guilty of is of a lesser description, when the sentence should be remitted or commuted by the confirming authority as seems just.

The confirming authority *may* alter a sentence improperly expressed, and also change a punishment if in excess of the amount a court-martial is able to award, confirming the sentence thus changed.

When a prisoner has been tried and convicted of an offence under the Army Act, and the sentence is

A Summary of Military Law.

144. R.P. 55. If the sentence of a court-martial is improperly expressed, or in excess of the punishment authorised by law, what course should be adopted by the confirming authority ?

145. R.P. 57. Give the rule for members of a court-martial taking their seats.

146. R.P. 58. For what is the president of a court-martial responsible ?

147. R.P. 59. What power has the court over the prosecutor and prisoner respectively ?

A Summary of Military Law.

confirmed, such shall be valid, notwithstanding any deviation from these rules, or any defect, &c., unless it shows injustice to the prisoner.

An officer is not, however, relieved by this rule from responsibility.

They shall take their seats according to their *army* rank, except on a regimental court-martial, when they take their seats according to their *regimental* rank.

(1) That everything is conducted in a befitting manner, and in accordance with the Army Act and Rules of Procedure.

(2) That the prisoner has the fullest justice done him.

The court should see that the prosecutor behaves impartially and brings the whole transaction before the court ; that irrelevant matter is not gone into, and that no violent language is used by him.

The court should give every allowance to a prisoner in making his defence, so long as he does not use coarse or disrespectful language.

A Summary of Military Law.

148. R.P. 60. When two or more prisoners are tried together, what is the rule regarding their evidence and addresses ?

149. R.P. 62. When a court-martial is closed for deliberation, what officers can be present ?

150. R.P. 63. What is the rule as to the time a court-martial can sit to try a prisoner ?

151. R.P. 64. When are courts-martial adjourned ?

A Summary of Military Law.

The evidence and addresses of *all* the prisoners will be taken before the prosecutor replies. The latter can only make one address.

The members of the court, the Judge-Advocate, and officers under instruction.

Except when closed as above, all persons can enter, and all proceedings are in presence of the prisoner.

A court may sit between 6 a.m. and 6 p.m., at such time as is directed by the superior military authority, but *may* continue after 6 p.m. by recording their reason for so doing.

A court may assemble at *any* hour in a case requiring immediate example; or, if military exigencies require it, it may sit on Sundays, Christmas Day, or Good Friday.

If president or Judge-Advocate are absent.

For military exigencies, the senior officer on the spot may adjourn a court-martial. When adjourned, and no place or date is specified, the place remains unchanged, and the adjournment is till further orders.

A Summary of Military Law.

152. R.P. 65. What is the rule of procedure when court-martial is dissolved ?

153. R.P. 66. When a trial, in consequence of the death or illness of the prisoner, cannot continue, what is done ?

154. R.P. 67. If a member, through illness, has been absent while evidence has been taken, can he continue to serve on the court-martial ?

155. R.P. 68. How are the opinions of members taken on a court-martial ?

A Summary of Military Law.

When a court-martial is dissolved by reason of the absence of the president or for other causes, a report is sent by the president, or in his absence by the senior member, to the convening officer.

If a court-martial is dissolved *before the finding*, or, in case of a finding of guilty, *before the sentence*, the proceedings are null, and the prisoner can be tried afresh.

The court take evidence of the same, adjourn, and transmit the proceedings to the convening authority.

He can take no further part in the proceedings, and (as no fresh officer can be added after the prisoner is arraigned) the court, in the case of being reduced below the legal minimum, must adjourn.

Beginning with the junior member, each member's opinion is taken on every question, and a member must give his opinion as to a sentence, although he had previously voted for the prisoner to be acquitted.

All questions are decided by a majority of votes, and, if necessary (*on a sentence*), the president has a second or casting vote.

A Summary of Military Law.

156. R.P. 69. If either the prosecutor or the prisoner wish for the court's opinion during trial, what is done?

157. R.P. 70. What is the procedure when several prisoners are to be tried by the same court-martial?

158. R.P. 72. What is the rule as to the evidence and documents produced before a court-martial?

159. R.P. 74. Is the prosecutor bound to call all the witnesses in the summary of evidence?

A Summary of Military Law.

The prosecutor or the prisoner, whichever wishes for the opinion of the court, speaks first, the other answers, and the first replies.

The court is sworn at the same time to try all the prisoners, either together or separately, and each prisoner is asked *separately* whether he objects to any of the members.

In the event of one of the prisoners objecting to a member, the court may either proceed with the trial of the other prisoners, or determine the objection made.

No evidence shall be received for the prosecution which is not relevant to the charge and in accordance with the Army Act.

The rules of evidence adopted in civil courts shall be strictly adhered to. No question or document shall be produced which could not be demanded by a civil court.

No, but he should call those that the prisoner desires to cross-examine.

A Summary of Military Law.

160. R.P. 75. Can the prosecutor call a witness whose evidence is not in the summary of evidence given to the prisoner?

161. R.P. 76. Is the prisoner obliged to give the prosecutor a list of the witnesses he intends to call?

162. R.P. 77. Who procures the attendance of witnesses on a court-martial?

163. R.P. 78. If the required steps have not been taken to secure the attendance of witnesses necessary for the prosecution or defence, what is done?

A Summary of Military Law.

Yes; but he ought to give notice of his intention to the prisoner. Should the witness be called without his having done so, the court should inform the prisoner of his right to ask for an adjournment, in order to prepare his cross-examination of the witness.

No; but he must secure the attendance of any witness whose name is not recorded in summary of evidence, or whose attendance he has not asked for.

The convening officer, or, after the assembly, the president, takes steps to procure the attendance of witnesses, whose expenses must be paid (if required) by the person requiring their attendance.

Witnesses *not subject* to military law can be ordered to attend by the convening officer, the president, the Judge-Advocate, or the prisoner's commanding officer.

Witnesses *subject* to military law are ordered to attend by proper military authority.

The court shall adjourn, and report the circumstances to the convening officer.

A Summary of Military Law.

164. R.P. 79. What is the rule as to when witnesses should be present in court?

165. R.P. 80. Who swears the witnesses, or causes them to make a solemn declaration?

166. R.P. 81. How are witnesses questioned on a court-martial?

167. R.P. 82, 83. Who can examine and cross-examine a witness?

A Summary of Military Law.

No witness (except by special leave) should be in court when not under examination, and even then he can be required to withdraw if the court wish to consult on any matter concerning his evidence.

The Judge-Advocate, the president, or any member of the court-martial.

A witness must answer any question put orally to him by the prosecutor, prisoner, or Judge-Advocate, unless objected to by the court, prosecutor, prisoner, or Judge-Advocate. In that case, the objection must be settled before the witness replies. The witness addresses his reply to the court.

A witness's evidence is read to him before he leaves the court, and he can make any explanation or correction.

The witness is examined by the person calling him.

The witness is cross-examined by the opposite party.

The witness is re-examined by the person calling him.

The witness is examined by the court or Judge-Advocate at any time *before the prisoner's second address.*

A Summary of Military Law.

168. R.P. 84. Up to what time can witnesses be recalled on a court-martial?

169. R.P. 85. Can a prisoner have a legal adviser or other person to assist him during the trial?

170. R.P. 95. To whom are the proceedings of courts-martial transmitted?

A Summary of Military Law.

(1) The prosecutor or prisoner can ask permission of the court to recall any witness to be questioned through the president *before the second address of the prisoner.*

(2) *Before the prisoner's second address,* the court can allow the prosecutor to call or recall any witness to rebut any material statement made by a witness for defence, or any matter the prosecutor could not have foreseen.

(3) When the prisoner has called witnesses as to character, the prosecutor may, *before the prisoner's second address,* call witnesses to prove previous convictions or entries in Defaulters' Book.

(4) The court may, *before the finding,* call or recall any witness.

Yes ; and the person can advise him on all points, and suggest the questions he should ask. If an officer under military law, he shall have the same rights as counsel.

If a general court-martial, to such person as Her Majesty may direct, through the order convening the court.

If a district court-martial, to such person as may be directed by the order convening the court, or, in default of direction, to the confirming officer.

If a regimental court-martial, the proceedings are sent by president to the confirming officer.

A Summary of Military Law.

171. R.P. 99. Who appoints a Judge-Advocate, and who are disqualified for sitting?

172. R.P. 100. If the Judge-Advocate dies, or through illness cannot attend, what course must be adopted?

173. R.P. 101. What are the powers and duties of a Judge-Advocate?

A Summary of Military Law.

For a general court-martial, the convening officer, if authorised, shall appoint a Judge-Advocate.

For a district court-martial, the convening officer may, *by order*, appoint a Judge-Advocate.

A court-martial shall not be invalid through any person being improperly appointed Judge-Advocate, but the person who has caused the invalid appointment is responsible for his mistake.

The court adjourns, and a person duly qualified is appointed. He is sworn, and performs the duties for the rest of the trial, or till the Judge-Advocate returns.

(1) He represents the Judge-Advocate-General, and is bound to give his opinion on any point of law to either the prosecutor or the prisoner.

(2) He is bound to inform the court of any informality in the proceedings; also (whether consulted or not) he must inform convening officer and court of any defect in the charge or the constitution of the court.

(3) Either he or the court can require such information to be entered on the proceedings.

(4) At the conclusion of the case, he will sum up, if necessary, and state the legal points.

(5) The court should pay great attention to the

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173. R.P. 101. What are the powers and duties of a Judge-Advocate?

174. R.P. 102. In cases of emergency, it is sometimes impossible to observe all or any of the rules laid down; what must then be done?

175. R.P. 103. What exceptions has a field general court-martial to the ordinary rules applicable to courts-martial?

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opinion of the Judge-Advocate, and not overrule it, except for very weighty reasons.

(6) Equally with the president, the Judge-Advocate should see that justice is done the prisoner, and for that purpose (with the permission of the court) he may call witnesses.

(7) He must perform his duty impartially.

The convening officer or the senior officer on the spot make a declaration to that effect, and the trial proceeds and is valid ; but the prisoner must have time to prepare his defence.

The interval between the charge being handed to the prisoner and the arraignment shall not necessarily be twenty-four hours, but as long as practicable.

It is not necessary to take either a summary or an abstract of evidence.

The members need not be of different corps.

The rule as to the rank of members on a general court-martial does not hold good on a field general court-martial.

The proceedings shall be transmitted to person directed by the convening officer, as if they were those of a district.

The convening officer, the officer who investigated the charge, a member of the Court of Inquiry, or the

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175. R.P. 103. What exceptions has a field general court-martial to the ordinary rules applicable to courts-martial?

176. R.P. 104. Who convenes a summary court-martial, and for what purpose?

177. R.P. 105. How is a summary court-martial composed?

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prisoner's commanding officer, *can* sit on a field general court-martial.

The president acts also as Judge-Advocate.

If prisoner pleads "guilty," the court proceeds as if it was a regimental court-martial.

The rules for giving prisoner time for his defence, how to proceed when the prisoner pleads "not guilty," the procedure as to the prisoner's witnesses to character and for defence, also the time the court sits, *only apply to a field general court-martial* as far as the exigencies of the service will allow ; but the prisoner should have as much time as possible to prepare his defence.

An officer in command of a body of troops on *active service* where an ordinary court-martial cannot be convened. To try anyone under military law who has committed an offence.

If below rank of field officer, and not a commanding officer, he must be satisfied that it is not practicable to delay, and refer case to superior authority.

If three members are not available, two can be appointed to form the court.

If three officers are not available, the convening officer may appoint himself president, when he is not the confirming officer.

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177. R.P. 105. How is a summary court-martial composed ?

178. R.P. 106. How can a summary court-martial be convened and carried on in a case of emergency ?

179. R.P. 109. How is a challenge of the president or any member of a summary court-martial proceeded with ?

180. R.P. 117. What amount of sentence can a summary court-martial award ?

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The president should not be of lower rank than that of captain, if possible.

All members to have three years' service, if possible ; if not obtainable, those of one year in commission may be appointed.

Any officer of a year's service can sit on a summary court-martial except provost-marshal, assistant provost-marshal, prosecutor, or witness for prosecution.

The court can be convened and proceeded with without any writing ; but the provost-marshal, his assistant, or the president shall take notes of the principal headings.

R.P. 107. *The charge* need only briefly describe the offence in *any* language.

If the prisoner objects to any of the officers, and any *one* member considers the objection reasonable, steps shall be taken to try the prisoner by a court with whose composition he is satisfied.

If composed of three officers, it has the powers of a general court-martial, except that death must be voted for unanimously.

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180. R.P. 117. What amount of sentence can a summary court-martial award?

181. R.P. 119. What is the rule as to the "confirmation" of a summary court-martial?

182. R.P. 123. State the regulations for *ordinary* Courts of Inquiry.

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If only two officers on the court, summary punishment or two years' imprisonment with hard labour.

Recommendation to mercy attached to and promulgated with the proceedings.

The finding and sentence are valid only in so far as they are confirmed by the proper military authority.

Provost-marshal or assistant provost-marshal can never confirm, nor can the prosecutor.

A member of a summary court-martial, who otherwise could confirm, and is of opinion that it is not practicable to delay, may confirm finding and sentence.

Sentence of *death* must be confirmed by the officer commanding force, when it is impracticable to obtain, or inadvisable to delay for, the confirmation by the officer in chief command, or by an officer of superior rank.

An officer can reserve any finding or sentence for confirmation by superior authority.

An officer who cannot confirm a district court-martial shall not commute summary punishment into imprisonment exceeding forty-two days.

(1) A Court of Inquiry can be assembled by any officer in command of troops, and it may consist of any number of officers of any rank or of any branch of the service.

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182. R.P. 123. State the regulations for *ordinary*
Courts of Inquiry.

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(2) The court must receive written instructions, stating the information required.

(3) A Court of Inquiry is really only an assembly of persons to report on a transaction which a commanding officer cannot conveniently enquire into.

(4) Notice of the time and place of assembly should be given to all concerned.

(5) When the inquiry affects *the character* of an officer or soldier, the accused should be present, and can cross-examine or produce witnesses to clear his character, or make any statement.

(6) Witnesses are *not* on oath.

(7) A Court of Inquiry shall give no opinion regarding the conduct of an officer or soldier, nor can the proceedings be given in evidence against him, but he can claim a copy of the proceedings.

(8) The commanding officer, to whom the proceedings are forwarded, forms his own opinion thereon.

(9) When, after perusal of the proceedings, the commanding officer or a superior military authority forms an adverse opinion to the character of an officer or soldier, he shall be informed of the same.

(10) The Court of Inquiry can be re-assembled as often as required by the convening officer.

(11) A member of the Court of Inquiry cannot sit on a court-martial (*except on a field general court-martial*).

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183. R.P. 124. What are the regulations for Courts of Inquiry regarding "absence without leave"?

184. R.P. 126. When it is necessary to assemble a Court of Inquest, who convenes it?

185. R.P. 134. How is time reckoned under these rules?

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The court requires the attendance of all witnesses to prove the absence and other facts specified. These witnesses are examined *on oath* or solemn declaration. The evidence is taken down in writing, and the court makes a declaration of their conclusions.

A record is made by the commanding officer in the regimental books of the declaration of the Court of Inquiry, and the original proceedings are destroyed.

Before arriving at a conclusion, the court should receive and take into consideration all evidence on behalf of the absentee who may wish to come forward.

The *members* are not sworn.

The officer commanding. It consists of three officers and a medical officer. The evidence is taken on oath. They report, together with the written opinion of the medical officer, to officer commanding the station, who forwards it to the nearest civil magistrate.

Time, for the purpose of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, or Christmas Day; but towards punishment or reduction of pay these days count.

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QUEEN'S REGULATIONS.—SECTION 6.

186. Paragraph 13. What are the powers of an officer in command of a detachment? When may any restrictions be made to prevent his exercising his full powers?

187. Par. 16. Give the duties of a commander of a guard, and of a provost-marshal, as regards taking charge of a prisoner.

188. Par. 20. What are the restrictions placed on an officer in open arrest?

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QUEEN'S REGULATIONS.—SECTION 6.

He has the same powers as an officer commanding a corps, but if he is below the rank of substantive major, the officer in command of the regiment or station may restrict his powers in their entirety or part. If, however, necessity arises, he may act to the full extent, but in that case must make an immediate report.

He must see that the person who hands the prisoner into custody sends in, within twenty-four hours, a report of the offence duly signed. At the time of committal, he should give a verbal report, if not a written one. If he does not receive a report within twenty-four hours, he must either apply for it or report to the officer to whom he furnishes his guard report, who, if the crime or sufficient evidence is not forthcoming at the end of 48 hours, should order the prisoner to be discharged.

He must not appear in his own or any other mess, nor in any place of amusement or public resort.

He must on no pretext whatever appear dressed otherwise than in uniform, but without sash, sword, or belt.

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189. Par. 22. What course is usually adopted by a commanding officer before placing an officer in arrest?

190. Par. 23. May an officer in arrest demand a court-martial?

191. Par. 25. What is the rule regulating the confinement of a soldier?

192. Par. 27. What is done with a soldier when in a state of drunkenness?

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He satisfies himself that it will be necessary to proceed, and he then reports to superior authority having placed the officer in arrest. He must also notify to the same if he releases the officer.

No ; nor can he, after being released from arrest, refuse to return to duty. If he thinks he has been wronged, he can obtain redress in the manner detailed in the Army Act.

If charged with a serious offence, he should be arrested at once ; but in the case of minor offences, such as absence from tattoo or other roll-call, overstaying a pass, or slight irregularities in quarters, he will not be put in the guard-room. He must not quit the barracks till his case has been disposed of. He will attend all parades, but will not be detailed for duty.

If possible, he should be confined alone till sober, and, if the weather is not too cold, he may be deprived of his boots.

He should be visited every two hours by an escort, and if serious illness is observed, a medical officer should be immediately sent for.

His drunkenness should not be tested by being put through any drill exercise.

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192. Par. 27. What is done with a soldier when in a state of drunkenness?

193. Par. 31. If a prisoner is, by error or in case of emergency, ordered to perform any duty, is he absolved from liability?

194. Par. 31. Are there any instances where a *prisoner* can carry arms?

195. Par. 35. What are the offences which a commanding officer, without reference to superior authority, may dispose of summarily or try by regimental court-martial?

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Twenty-four hours should elapse before he is taken before his commanding officer, so that he may be perfectly sober.

No ; he can be proceeded against all the same.

Yes, by order of his commanding officer, in case of emergency or on the line of march.

A.A., Sect. 10. (1) Striking or offering violence to any person in whose custody a soldier was placed, whether his superior or not.

(2) Resisting an escort whose duty it was to apprehend him or have him in charge.

(3) Breaking out of barracks, camp, or quarters.

A.A., Sect. 11. Neglecting to obey general, garrison, or other orders.

A.A., Sect. 15. (1) Absenting himself without leave *not* exceeding 21 days.

(2) Absenting himself from parade, or leaving it without permission.

(3) Absenting himself from school when warned to attend.

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195. Par. 35. What are the offences which a commanding officer, without reference to superior authority, may dispose of summarily or try by regimental court-martial ?

196. Par. 37. What is meant by a soldier serving in an exemplary manner ?

197. Par. 38. If there is not sufficient evidence forthcoming at the time a prisoner charged with an offence is brought up, what course should be adopted ?

198. Par. 40. When the character or conduct of an officer has been publicly impugned, what course should *he* adopt ?

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(4) Being found beyond the limits of the station without a pass.

A.A., Sect. 19. (1) Drunkenness, whether on duty or not.

A.A., Sect. 24. Making away with (whether by pawning, &c.), his arms, ammunition, &c.; also, any military decoration.

(2) Losing by neglect any of the above articles.

(3) Ill-treating or making away with a horse.

A.A., Sect. 40. Conduct to the prejudice of good order and military discipline.

When he has had no entry in his regimental defaulters' sheet for a continuous period of three years.

If charged with a serious offence, he may be released from arrest or confinement, and ordered to do duty, without prejudice to his re-arrest at a future time, when further evidence is obtained. If the offence is *not* serious, the case is dismissed.

He should submit the case, within reasonable time, to his commanding officer or other competent military authority for investigation.

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199. Par. 42. How is punishment drill carried out?

200. Par. 44. How are soldiers' characters recorded?

201. Par. 46. What powers of awarding punishment for minor offences may be delegated to officers commanding troops, batteries, or companies by the commanding officer?

202. Par. 47. In dealing with a soldier charged with "absence without leave," what points ought to be taken into consideration by the commanding officer? On what date is the absence reckoned to terminate?

203. Par. 48. When a commanding officer disposes of an offence which obliges a soldier to go to hospital, what form should be carried out?

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Punishment drill consists in marching about in quick time for an hour at a time in the barracks (not more than four hours a-day), without any drill. In very cold weather the double time may be used for very short periods. If there is no barrack square, then on a public road under a non-commissioned officer.

The following terms only are to be used:—*Very good, good, fair, indifferent, bad, and very bad.*

They may award punishment up to seven days' confinement to barracks, subject to remission by the commanding officer.

The commanding officer will have regard to the place of the soldier's surrender or apprehension, and how long he has been in custody. The absence terminates on the day he is arrested.

As a soldier forfeits *all* his pay for every day he is in hospital on account of illness caused by an offence committed by himself, and certified by the proper

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203. Par. 48. When a commanding officer disposes of an offence which obliges a soldier to go to hospital, what form should be carried out?

204. Par. 49. What should be done when a non-commissioned officer is convicted by the civil power?

205. Par. 51. When may a soldier be tried for drunkenness?

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medical officer, the commanding officer, on punishing a soldier, notifies the same to the medical officer, so that he can furnish the required certificate.

A report is made to the general commanding the district, to ascertain whether the Commander-in-Chief desires to reduce the non-commissioned officer to the ranks.

A soldier shall not be tried for drunkenness committed when he was not on duty, or had not been warned for duty, or which is not an aggravated offence, unless four instances of drunkenness have been recorded against him in the year preceding the date of the offence under disposal. Then he *may* be tried ; but he *ought* to be tried if the instances amount to *eight* times within twelve months, reckoned without deduction for forfeiture of service or absence from duty. Exception *may* be made if the soldier has been tried and convicted during the twelve months for a simple act of drunkenness unaccompanied by any other offence. [*N.B.*—To explain the last sentence, a soldier *can* be tried for a simple act of drunkenness (unaccompanied by any other offence) if drunk five times in a year (as stated in this paragraph), or, having been awarded imprisonment or stoppage of pay as a punishment for the offence, has demanded a court-martial.]

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206. Par. 52. What are reckoned as instances of drunkenness?

207. Par. 53. If a commanding officer has reason to believe a soldier has remained absent to avoid the punishment for drunkenness, what course can he adopt?

208. Par. 54. What are included under "drunkenness on duty"?

209. Par. 55. When a soldier commits a simple act of drunkenness in connection with a more serious offence for which he is remanded for court-martial, *what* course can his commanding officer pursue?

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All entries in the Defaulters' Book, whether the offence has been dealt with summarily or by court-martial.

When dealing with the case of absence, he will decide, from his knowledge of the prisoner's character and the circumstances of the case, whether the absence is or is not to be considered as having arisen with this design. If he decides that it has so arisen, his decision is recorded in the guard report and entered in the soldier's defaulters' sheet, with the letter D in the column headed "cases of drunkenness." No fine will be awarded for this, but it counts as an instance *in subsequently computing a fine*, but not as an instance towards liability to trial by court-martial.

Drunkenness on duty includes drunkenness on parade or on the line of march. The latter (drunkenness on the line of march) includes drunkenness during the whole time between the date of departure and date of arrival at destination.

Unless liable (from the number of instances in one year) to be tried, he should not be arraigned for drunkenness before the court-martial ; but, as a record of drunkenness, the commanding officer will either

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209. Par. 55. When a soldier commits a simple act of drunkenness in connection with a more serious offence for which he is remanded for court-martial, what course can his commanding officer pursue?

210. Par. 56. Give the scale of fines for drunkenness.

211. Par. 57. How are simple acts of drunkenness punished by a commanding officer?

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impose a fine, or mark "No punishment; awaiting trial on another charge." This entry is *bracketed* with the court-martial entry in case of conviction.

(1) First and second instances after attestation, no fine.

(2) For the third and every subsequent instance—

If within three months of the previous

instance, 7s. 6d.

If over three and under six months, 5s. 0d.

If over six and under nine months, ... 2s. 6d.

If over nine months,no fine.

(3) Where liable to a fine, and four previous instances in a year have been recorded, 2s. 6d. *will be added* to the fine.

(4) An act of absence without leave *marked D* counts as an instance in computing the amount of a fine.

(5) The time a soldier is absent without leave or in prison does not count in the period since the last instance in computing the amount of fine.

(6) In colonial corps the fines are one-half the above.

If the act of drunkenness is aggravated, confinement to barracks should be added to the fine imposed.

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211. Par. 57. How are simple acts of drunkenness punished by a commanding officer?

212. Par. 58. Can fines be recovered from a soldier in any other manner than from his pay?

213. Par. 59. How is the scale of fines made known? Are they entered in the Regimental Defaulters' Book?

214. Par. 63. How may a superior officer deal with a case referred to him?

215. Par. 64. When can an offence, punishable by death or penal servitude, be disposed of summarily, or by a regimental or district court-martial?

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Imprisonment should not be awarded, unless the case is one that may be tried by court-martial, or 20s. of fines remain unpaid. In the latter case no further fine is imposed, but imprisonment is awarded instead.

No ; nor will fines be deducted while other legitimate charges remain unpaid.

The scale of fines is posted in every barrack-room. No entry of a fine is made in the Regimental Defaulters' Book.

- (1) He may refer the case to superior authority.
 - (2) He may order the case to be summarily dealt with, or by regimental court-martial.
 - (3) If he has the power to convene a district court-martial, he may have it tried by a district court-martial.
 - (4) If he has authority to convene a general court-martial, he may assemble either a general or a district court-martial to try it.
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By order of an officer who has power to convene a general court-martial.

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216. Par. 65. If an officer has a case submitted to him which he ought to refer to superior authority, but the case is emergent, what course can he adopt?

217. Par. 66. If a soldier is tried by a court-martial inferior to the one he ought to have been brought before, without the prescribed permission, do the proceedings hold good?

218. Par. 68. What sort of court-martial ought to have sufficient powers to deal with ordinary offences? When is it necessary to have resort to a general court-martial?

219. Par. 70. In offences against superiors, what must be borne in mind?

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He may dispose of the case without reference to higher authority, but in that case must immediately report his action, and his reasons for it, to the officer to whom he would have referred the case.

Yes ; the validity of the proceeding is not affected thereby, and the conviction, if otherwise sustainable, will hold good.

A district court-martial has ample powers to maintain discipline, and a general court-martial ought only to be assembled to deal with aggravated offences, or if an example is required to be made.

For soldiers committing an offence under provocation—of previously good character or short service—a regimental court-martial will usually be sufficient to check crime, and bring offender to a due sense of his fault.

Under ordinary circumstances, an offence against a person of much higher rank than the offender is a more serious crime than an offence against a person holding a lower position in the service.

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220. Par. 71. How is the crime of theft from a comrade generally dealt with ?

221. Par. 73. What officer usually convenes a regimental court-martial ?

222. Par. 77. When a soldier is arraigned on a serious charge which discloses minor offences, or minor offences are pending against him, how should the convening officer act ?

223. Par. 79. When may a prisoner be tried for an offence at a station other than that where the offence was committed ?

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As a general rule, it is dealt with by court-martial in preference to the civil power.

The commanding officer of the soldier charged.

An officer who has power to convene a general or district court-martial is authorised to convene a regimental court-martial, but in ordering a case to be disposed of by a regimental court-martial, he directs the commanding officer to convene the court, unless he has not officers enough under his command.

He may use his discretion in striking out the minor offence. As a rule, a charge should not be brought to trial as an addition to a serious charge if the soldier would not otherwise have been tried for it.

A saving of expense, on account of transit of witnesses, would justify an application being made by the general commanding the station to head-quarters for a change of place for the court-martial to assemble ; but no such application should be made if it prejudices the prisoner.

When the case is tried in another command, the court will be convened by, and be under the responsibility of, the officer to whose command the prisoner is removed.

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224. Par. 84. What are the duties of a prosecutor on a court-martial ?

225. Par. 85. What is the usual number of members on courts-martial ?

226. Par. 87. In addition to the restrictions prescribed in the Army Act and Rules of Procedure regarding the rank of officers on court-martial, there are others stated in the Queen's Regulations ; name them.

227. Par. 91. When it is necessary to annex a document to the proceedings of a court-martial, and the original is required for record, what is done ?

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To bring the case fully before the court in evidence, and to take care (when the prisoner is unassisted) that nothing is omitted which would benefit the prisoner.

Drunkenness is no excuse, but if the prisoner was drunk when he committed the offence, this fact should be brought out in the evidence, as it might influence the court in their sentence.

On district and regimental the legal minimum is generally sufficient, but on a general court-martial, which is likely to be prolonged, from two to four in excess of the minimum should be detailed. Waiting members should also be appointed in case of reduction by challenge.

When a general or a colonel is available, no other officer of lower rank shall be appointed president of a general court-martial?

For the trial of a commanding officer, as many officers as possible who have held or are holding equal commands should be detailed.

The original and a certified copy are both produced before the court and compared. The certified copy is annexed, and the original returned to be used as a record.

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228. Par. 92. In passing sentence, what points should be borne in mind by the members of a court-martial ?

229. Par. 93. When a prisoner has been convicted of stealing, and put under stoppages to make good the same, what is the rule regarding any money found in his possession ?

230. Par. 94. A prisoner is sentenced by court-martial abroad to imprisonment ; what is done ?

231. Par. 98. If it appears to the confirming officer that the proceedings are illegal or irregular, what course should he adopt ?

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Anything in extenuation or aggravation brought forward in evidence. The locality and climate where the sentence has to be carried out. *For a lesser offence*, tried by a district court-martial, as a rule, for a *first conviction*, *three months' imprisonment* should rarely be exceeded.

If the money has been ordered to be applied towards making good the value of the stolen property, the prisoner shall only be put under stoppages for the balance.

If penal servitude or imprisonment exceeding twelve months be awarded, the offender must be sent to the United Kingdom, unless the court order (in case of imprisonment) otherwise. Such order, if omitted in original sentence, may be made on revision.

If he *has not* confirmed the finding and sentence, he will withhold confirmation.

If he *has* confirmed the finding and sentence, he will order the record to be removed, and the soldier to be relieved from all consequences of his trial.

If in doubt, he may refer to superior authority.

- If *no* illegality has occurred, but an irregularity only, the conviction will stand, and the confirming

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231. Par. 98. If it appears to the confirming officer that the proceedings are illegal or irregular, what course should he adopt?

232. Par. 99. To whom are the proceedings of a general court-martial transmitted?

233. Par. 102. Where are the proceedings of regimental courts-martial kept?

234. Par. 104. Who are liable to be awarded general service?

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officer will consider if any reduction of sentence is due to the prisoner.

The same rule applies, if anything wrong in the proceedings is found out by the other competent authorities whose duty it is to review the proceedings.

If held in the United Kingdom, the Judge-Advocate sends them to the Judge-Advocate-General.

If held elsewhere, to the general or other officer authorised to confirm them.

The proceedings of all general and district courts-martial are retained by the Judge-Advocate-General after promulgation, the former for seven and the latter for three years.

After promulgation, and being entered in the Regimental Defaulters' Book, the proceedings are retained at the regimental dépôt for three years.

(1) Any soldier of the regular forces sentenced to six months' imprisonment by court-martial; (2) any soldier who, having been guilty of desertion or fraudulent enlistment, has been convicted by court-martial, or having confessed and his trial dispensed with by the Commander-in-Chief—is *liable*, in commutation of the whole or any part of the punishment, to general

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234. Par. 104. Who are liable to be awarded general service?

235. Par. 107. Of what rank should those appointed provosts-marshal and assistant provosts-marshal be?

236. Par. 112. Can a Court of Inquiry be held on a man of the army reserve?

237. Par. 117. What course should be adopted when a soldier absents himself without leave, or when there is good ground for supposing an absentee has deserted?

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service, and may from time to time be transferred to such corps as the Commander-in-Chief may order.

The object of this enactment is to remove from the temptations of home service men who may prove good soldiers abroad.

The provost-marshal of a force on active service must be a commissioned officer, and the principal provost-marshal should, if possible, be a field officer.

The assistant provosts-marshal will be selected officers or non-commissioned officers.

Not unless he was subject to military law at the time he committed the offence.

Within twenty-four hours—but in no case more than five days—after his absence is discovered, a descriptive report of the absentee without leave, or deserter, is forwarded by the commanding officer to the *Police Gazette*.

Up to twenty-one days, a soldier should not, without good ground, be returned as a deserter; but after that time, he should be noted as having deserted.

A duplicate descriptive report is sent to the police of the locality, and to the churchwardens of the absentee's parish.

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238. Par. 128. If a militiaman enlists in the regular forces without having obtained a release from the militia, what steps should be taken?

239. Par. 135. When a soldier confesses to be a deserter, and his trial is dispensed with by the Commander-in-Chief, what record is kept?

EVIDENCE.

*N.B.—The contents of this chapter are obtained from
Boughey.*

240. Give the grounds of incompetency laid down by law.

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If the officer commanding the militia regiment has no objection, he (the soldier) can be retained in army service, but he is liable to make good the compensation laid down in the Royal Warrant.

The soldier's confession and the order dispensing with trial, or copies thereof, will be preserved with the record of service, and an entry of the order dispensing with trial will be made in the court-martial and defaulters' books, as if the soldier had been convicted of the offence.

EVIDENCE.

N.B.—The contents of this chapter are obtained from Boughey.

- (1) Want of reason or understanding.
- (2) Husband and wife for or against each other (except personal injury, or under par. 3, sect. 156, Army Act).
- (3) Prisoner on his trial is incompetent to give evidence for or against himself.
- (4) Prisoners tried together cannot give evidence for or against one another. If a prisoner wants the evidence of another who is under the same charge, he must apply for a separate trial.

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241. How do you test the credibility of witnesses?

242. What amount of testimony is required to secure a conviction before a civil court? Is it the same on courts-martial?

243. Define the term "Evidence."

244. What is competent evidence?

245. What is satisfactory evidence?

246. Name in detail the general rules as to evidence on court-martial.

A Summary of Military Law.

By cross examination, or directly by evidence of bad character.

One credible witness (except for perjury, traitorous words against the sovereign, and certain cases of high treason) for civil court ; but in courts-martial it is usual to have two witnesses for the prosecution.

It includes all legal means, exclusive of argument, which tend to prove or disprove any fact which is being investigated.

What the law requires as fit and appropriate evidence to the point in question.

The amount of proof which satisfies an unprejudiced mind beyond reasonable doubt.

(1) The best evidence the case admits of must be produced.

(2) Hearsay is not evidence.

(3) The evidence on either side must be confined to the points in issue.

A Summary of Military Law.

246. Name in detail the general rules as to evidence on court-martial.

247. What is meant by "the best evidence to be produced"?

248. Why is hearsay evidence rejected?

249. Are there any exceptions to this rule?

A Summary of Military Law.

(4) The point in issue is to be proved by the person who asserts the affirmative.

(5) It is sufficient to prove the substance of the issue or charge.

No secondary or derivative evidence is to be produced till all the primary evidence is exhausted. Word-of-mouth evidence is not always the best.

Sometimes, as in the case of disobedience of *written* orders, the document itself is *the* best evidence of its contents.

The best evidence cannot always be obtained. In that case, the next best legal evidence is allowed.

Because it is not stated on oath, and also because the prisoner had no opportunity of cross-examining. This applies to both parole and documentary evidence.

(1) The evidence of a witness examined on oath on a former trial between the parties, and since deceased, can be taken as evidence, and proved by notes or by any person who heard it.

(2) The declaration of a person who, having received a mortal injury, believes himself to be dying. This evidence is only admissible when the death of the person is substance of the charge.

A Summary of Military Law.

249. Are there any exceptions to this rule ?

250. When are the words and writings of a third party admitted in evidence ?

251. What is meant by "the evidence on either side must be confined to the points in issue" ?

A Summary of Military Law.

The declaration of deceased *in favour* of accused is equally admissible.

(3) The declaration of a person robbed, made immediately afterwards, can be received as *confirmatory* evidence.

When the sayings and doings of other persons than the prisoner form part of the charge. For instance, the conversation of a prisoner about the subject under inquiry may be received, as it would show the inclination of his mind.

Where a man maims himself to get discharged, and states he did so, such evidence must be admitted.

The points in issue on any trial are the facts alleged to be true by the prosecutor, and denied by the prisoner in his plea of "not guilty." Inquiry into facts not specified in the charge would, as a rule, be irrelevant, but there are cases when it is allowable to do so. *For instance, in a case of stealing*, inquiry might be made into articles stolen on same night from adjoining premises, and found in the prisoner's possession.

Again, in *desertion or maiming*, where intention forms part of the charge, it will be advisable to enquire where the prisoner was arrested, and how he injured himself.

A Summary of Military Law.

252. In establishing charges of mutiny, or exciting mutiny, there is a peculiarity in regard to the reception of evidence ; what is it ?

253. When a soldier is tried for an ordinary case of drunkenness, what is it necessary to prove in evidence before a court-martial, although the facts are not stated in the charge ?

254. Explain the rule, "The point in issue is to be proved by the party that asserts the affirmative."

255. If a prisoner, in his defence, asserts a fact which, if true, would entitle him to acquittal, what *should* he be further required to do ?

A Summary of Military Law.

The acts of one of a body of men assembled for an illegal purpose are considered the acts of the whole. Thus, on showing connection of conspirators, all words or writings brought home to one of them are evidence against the others.

That the prisoner had been drunk more than four times in the year.

That he had been warned for duty.

If a prisoner is on trial at his own request (not being satisfied with the award of his commanding officer), the fact is stated by the prosecutor after the charge-sheet is read.

This means that the burden of proof lies with the party who makes any distinct assertion on the truth of which any fact depends. On a court-martial this usually rests with the prosecutor. If the prisoner pleads "guilty," the prosecution is relieved of this duty, as the charge cannot break down for want of evidence.

To prove the fact affirmed.

Thus, in a case of a soldier tried for desertion, the prosecutor proves illegal absence amounting to deser-

A Summary of Military Law.

255. If a prisoner, in his defence, asserts a fact which, if true, would entitle him to acquittal, what should he be further required to do?

256. Name the presumptions in law which are held to be good.

257. When an act is in itself unlawful, with whom does the proof of justification lie?

258. Explain the rule, "It is sufficient to prove the substance of the issue or charge."

259. Exemplify the above rule by mentioning **some of the cases** that may arise on courts-martial.

A Summary of Military Law.

tion, if the prisoner asserts he was apprehended not meaning to desert, the burden of proving this assertion rests with the prosecutor.

(1) Every man is presumed innocent till proved guilty.

(2) Every man is presumed to intend the necessary consequences of his own action.

Thus, if a man shoots at another and death ensues, the law presumes he meant to kill him.

With the prisoner, otherwise criminal intent is presumed.

The meaning of this rule is, that sometimes the evidence is not sufficient to prove everything with which the prisoner is charged, but at the same time proves him to be guilty of an offence, and therefore punishable according to the nature or degree of the offence.

Thus, in civil courts a person tried for murder may be convicted of manslaughter.

(1) *Desertion*, when prisoner can be found guilty of attempting to desert, or absence without leave.

A Summary of Military Law.

259. Exemplify the above rule by mentioning some of the cases that may arise on courts-martial.

260. What is direct, or positive, evidence?

261. What is circumstantial evidence?

A Summary of Military Law.

(2) *Stealing*, when prisoner can be found guilty of embezzling or fraudulently misapplying public money or goods.

(3) *Insubordinate language*, where the words proved are not exactly those mentioned in the charge, but convey the meaning.

(4) Officers charged with *scandalous conduct* may be acquitted of the imputation, but if an offence is proved to the prejudice of good order and military discipline, conviction is legal, and punishment may be awarded accordingly.

(5) Soldiers charged with *disgraceful conduct* may not have the crime fully proved, but may be found guilty of an offence under the Army Act, and be punished accordingly.

That given on actual and personal knowledge respecting the principal fact charged.

It is presumptive proof from which the principal fact can be inferred. It is more trustworthy than mere statement, for a concurrence of well-established incidents will carry clearer conviction to the mind than positive evidence without a narration of circumstances.

A Summary of Military Law.

262. Explain fully the term "circumstantial evidence."

263. What kinds of documentary evidence are there?

264. What are the public documents received as evidence by a court-martial?

A Summary of Military Law.

There is a distinction between the principal fact to be proved and the subordinate facts, which are relevant only as evidence of the principal fact.

The evidence regarding the principal fact is *direct*.

The evidence regarding the subordinate facts is *circumstantial*.

Public and private.

Army Act, Sect. 163, lays down that the following documents can be produced before a court-martial :—

(1) The attestation paper. The *original* must be produced to prove that a soldier made false answers on attestation. A *certified* copy is sufficient to prove the enlistment of a person in Her Majesty's service.

(2) A letter or document signed by a military authority respecting the service or discharge of any person from Her Majesty's forces or one of Her Majesty's ships.

(3) Copies of the Queen's Regulations, of royal warrants, and of army circulars published by authority.

(4) Army List or Gazette, published by authority.

(5) To prove notice has been given to a man of the Army Reserve, it is only necessary to produce a copy of the letter summoning him, and which was left at his last registered place of abode.

A Summary of Military Law.

264. What are the public documents received as evidence by a court-martial ?

265. What is the rule as to the private documents that can be produced before a court-martial ?

A Summary of Military Law.

(6) Records from the regimental books, or certified copies of the same.

(7) Descriptive returns signed by a justice of the peace are evidence of their contents.

A private writing cannot be produced to prove the fact it contains, but only that the writer wrote that such facts took place.

In the case of a person being charged with disobeying a written order, the document containing the instructions which he ought to have obeyed is stronger evidence than any statement. Thus, it would be accepted in preference to parole proof.

Originals should always be produced, to be compared with certified copies (if any). *Copies* are not admissible, unless it is clearly proved why the original is not produced.

Handwriting should be proved by some one who knows the writing. The evidence of *experts* is admissible, but must be corroborated. If the prisoner *acknowledges the handwriting*, the admission is entered in the proceedings and accepted as evidence.

Before questioning a witness regarding any letter or document of his own, he must first of all state, in presence of the court, that it is his writing.

A Summary of Military Law.

266. Can depositions be received as evidence before a court-martial ?

267. What is the rule as to depositions ?

268. When are dying declarations received as evidence ?

269. When are confessions received as evidence ?

A Summary of Military Law.

Only on trials for *criminal offences*, in default of a civil court.

Before a deposition can be received as evidence, proof must be given—

- (1) That the deponent is dead, or too ill to attend.
 - (2) That the deposition was taken, in presence of the prisoner, before a magistrate on oath, and that the prisoner could have cross-examined.
 - (3) That the deposition was signed by both the magistrate and deponent.
-

In cases of homicide, where the death of the person making the declaration is the subject of the charge, and the circumstances of death the subject of the declaration. It is then supposed to be true, as a person at the point of death would not be likely to state a falsehood.

When voluntarily made either before or after arrest. They must be proved, and are not considered satisfactory unless corroborated. In case of mutiny or conspiracy, the confession of one, if substantiated, holds good against all ; but in other cases it is only evidence against the person making it, and not against an accomplice.

A Summary of Military Law.

GENERAL QUESTIONS.

270. What is the Regimental Defaulters' Book, and what punishments are entered therein?

A Summary of Military Law.

GENERAL QUESTIONS.

It is an unbound book containing a sheet for every non-commissioned officer and soldier of the regiment. These are arranged alphabetically, and secured together. Thus, when a man becomes non-effective, or is transferred to another corps, his sheet can easily be removed.

The punishments entered in it are—

- (1) Court-martial convictions.
- (2) Every case of desertion or fraudulent enlistment where trial has been dispensed with by competent military authority.
- (3) Convictions by civil power, where a fine has been inflicted, and the offender has not undergone imprisonment in default of payment, when it is optional with the officer commanding the district to enter it or not.
- (4) Reduction of a non-commissioned officer by order of Commander-in-Chief (not for inefficiency).
- (5) Imprisonment awarded by commanding officer.
- (6) Deprivation of pay or liquor ration, or 1d. a-day in lieu thereof.
- (7) Confinement to barracks over seven days.
- (8) Award on board one of Her Majesty's ships, which award is equivalent to any of the before-named punishments.
- (9) Punishments awarded prisoners in military prisons or provost prisons by appointed visitors.

A Summary of Military Law.

270. What is the Regimental Defaulters' Book, and what punishments are entered therein?

271. Under what circumstances may a soldier be sentenced to summary punishment? What constitutes summary punishment? Where is it laid down, and when was it introduced?

272. When and on what account are stoppages awarded by court-martial?

A Summary of Military Law.

(10) Convictions, under Army Discipline and Regulation Act, 1879, of a man in the Army Reserve.

Sect. 44, par. 5, Army Act, lays down that, when a soldier on active service is guilty of an aggravated offence of drunkenness, of an offence of disgraceful conduct, or of an offence punishable with death or penal servitude, a court-martial may award summary punishment.

This summary punishment, as laid down at the end of the Army Act, and dated July 30, 1881, consists of field imprisonment Nos. 1 and 2, and can be awarded by court-martial for a period of three months.

No. 1. (a) The prisoner may be kept in irons or fetters, and secured so as to prevent his escape.

(b) When in irons, he may be attached for not more than two hours for three out of four consecutive days, nor for more than twenty-one days in all, to a fixed position.

No. 2 is the same as No. 1, except that the soldier is not tied up in a fixed position.

On account of loss or damage, and for free kit obtained on fraudulently enlisting from the militia.

When it is required to place the soldier under stop-

2. GENERAL OF HISTORY

272. What are the various accounts and suggestions
arising from the court-martial?

273. Can officers of the regimental staff or medical
officers sit on court-martial?

274. What are the powers of a regimental court-
martial?

275. What are the powers of a district court-
martial?

A Summary of Military Law.

pages, the amount *must* be stated in the *particulars* of the charge.

No stoppages are now made on account of necessities; this is settled between the soldier and his captain.

Paymasters, quarter-masters, and medical officers can sit as members of courts-martial, but the president *must* be a combatant officer.

(1) Imprisonment with or without hard labour up to 42 days.

(2) Fines for drunkenness up to £1.

(3) *Stoppage* of pay to make good loss of or destruction or damage to arms, ammunition, regimental necessities, &c.

Expenses, damage, &c., caused by misconduct.

(4) *In case of non-commissioned officers—*

Reduction to the ranks or to a lower grade.

N.B.—A regimental court-martial cannot award forfeitures.

It has all the powers of a regimental court-martial, and in addition can award—

(1) Imprisonment up to two years, with or without hard labour.

A Summary of Military Law.

275. What are the powers of a district court-martial?

276. What are the offences in relation to witnesses on courts-martial, and how are they dealt with?

A Summary of Military Law.

- (2) *Forfeiture* of all or any portion of good conduct pay or deferred pay.

Do. of all or any portion of past service towards pension.

Do. of decorations or rewards, with any gratuity or annuity attached thereto.

- (3) Discharge with ignominy.

- (4) *In case of warrant officers* (a warrant officer cannot be tried by a regimental court-martial), *Reduction* to the bottom or any place in his rank, or to an inferior class of warrant officer. *Suspension* for any period, or *dismissal* from the service.

If originally a private, and transferred to serve as a warrant officer, he can be sent back to do duty in the rank he held previous to appointment, or be *reduced* to the ranks. In the latter case he shall not be required to serve as a soldier.

-
- (1) When duly summoned (or ordered) to attend as a witness before a court-martial, making default in attending.

- (2) Refusing to take an oath (or solemn declaration) legally required by a court-martial to be taken.

- (3) Refusing to produce a document in his power (or control) legally required by a court-martial to be produced by him.

A SUMMARY OF MICHIGAN LAW.

276. What are the offenses in relation to witnesses in courts-martial and how are they dealt with?

277. What is the rule as regards deprivation of pay?

A Summary of Military Law.

(4) Refusing, when a witness, to answer a question to which a court-martial might legally require an answer.

(5) Being guilty of contempt of a court-martial, by using bad language, or by causing a disturbance in such court.

(6) Wilfully giving false evidence when examined on oath or solemn declaration before a court-martial.

If the above are committed by persons subject to military law, they can, under Secs. 28 and 29, Army Act, if officers, be cashiered or awarded less punishment, and if soldiers, awarded imprisonment, by *another* court.

For the offence contained in paragraph 5, 21 days' imprisonment can be awarded the offender by the court-martial then sitting.

Civilian witnesses guilty of any of the above are sent before a civil court, and punished as if the offence was committed before that court.

For absence without leave up to five days, a soldier *may* have the *whole* of his daily pay stopped, in addition to imprisonment or confinement to barracks, by his commanding officer.

After five days it is unnecessary for the commanding officer to mention it, as the absentee's pay is forfeited by royal warrant.

A Summary of Military Law.

278. What is the greatest amount of confinement to barracks a soldier can be awarded, either for one or more offences, by his commanding officer?

279. Does the time a soldier is absent or in prison count, in the months that must have expired, in calculating the fines for drunkenness?

280. Define the term "active service."

281. What is meant by a "superior officer"?

282. What is meant by "in the execution of his office"?

A Summary of Military Law.

For one offence 28 days' confinement to barracks, 14 of which are punishment drill. This may be combined with imprisonment up to 168 hours—stoppage of pay or fine as long as the whole does not exceed 28 days in length.

For a second offence, committed before the above term is completed, a further punishment may be awarded, but not to exceed 56 days in all, under any circumstances.

No; for instance, if three months and six days had elapsed since he was last brought up for drunkenness, but the soldier had been seven days in prison during that time, he would be liable to 7s. 6d. fine, as having been drunk within the three months.

Active service means service in war or in occupation of an enemy's country.

A warrant officer or a non-commissioned officer is a superior officer equally with a commissioned officer.

This is when an offence is committed against an officer or non-commissioned officer in uniform.

When an offence is committed against an officer in

A Summary of Military Law.

282. What is meant by "in the execution of his office"?

283. When should a soldier be charged with desertion?

284. If a soldier absents himself from his corps and enlists in another, under what section of the Army Act should he be charged?

285. If a soldier re-enlists in the regular forces, after having been discharged with disgrace (or ignominy) from the army, or after having been dismissed with disgrace from the navy, without declaring the circumstances, how should he be charged?

286. There are crimes for which a soldier forfeits his past service, but can have it restored to him after three years' exemplary conduct. What is meant by "*exemplary conduct*"?

A Summary of Military Law.

plain clothes, the words "in the execution of his office" should be omitted from the charge, unless the offender had reasonable cause for knowing he was an officer.

This is a difficult question. A man is not supposed to be a deserter unless it can be shown he had no intention to return to his corps. The time he is absent without leave has, therefore, little to do with it. If there is any doubt, it would be safer to try the soldier on a charge of absence without leave.

Under section 13, "fraudulent enlistment," and not for "desertion," under section 12.

Under section 32 of the Army Act, which specially provides for cases of this description.

Three years consecutively without an entry in the Regimental Defaulters' Book.

A Summary of Military Law.

287. For what description of court-martial is a Judge-Advocate required?

288. Name the reasons that would be considered valid in challenging the president or members of a court-martial.

A Summary of Military Law.

There *must* be a Judge-Advocate on every general court-martial, and there *may* be one appointed on a district court-martial.

In every case the Judge-Advocate shall be a commissioned officer.

O'Dowd, in his "Practical Hints to Courts-Martial," page 140, states that, in determining whether a prisoner's objection to a particular officer or member of the court should be allowed or overruled, the main question to be borne in mind is, that every person exercising judicial functions should do so entirely free from prejudice. If it appears that an officer has expressed or entertains an opinion upon the merits of the case, or adverse to the prisoner personally, or if his relations with the prisoner have been such that he might regard him as an obnoxious person, he ventures to think an objection on that ground should be allowed. It would be no imputation upon the good faith of the officer objected to ; it would not imply an opinion, on the part of the officers dealing with the objection, that he would not honestly endeavour to fulfil the obligations of his oath. It simply means an opinion that the case should, as far as possible, not be judged by minds upon which a prejudice may rest even insensibly, and that in every practical way respect should be shown, not only for the direct interests of justice, but for the reputation of justice.

A Summary of Military Law.

289. In the trial of a commissioned officer, should inquiry be made into the prisoner's character ?

290. What is meant by the term "previous conviction" ?

291. What punishments can be combined in a sentence by court-martial ?

292. What is the distinction between cashiering and dismissal ?

FRAMING CHARGES, &C.

293. How should a charge-sheet be headed in the cases of—

(1) An officer on half pay employed on military service ?

(2) A militiaman ?

(3) A follower of the forces ?

A Summary of Military Law.

No ; inquiry into former convictions is alone authorised.

A conviction by civil court, where seven days' imprisonment (or a fine in lieu thereof) was awarded.
Any previous trial and conviction by court-martial.

It would be illegal to combine penal servitude with imprisonment, but discharge with ignominy, fines, stoppages, and, in cases of non-commissioned officers, reduction, can be coupled with any other legal award.

An officer who is cashiered cannot again serve Her Majesty, but one dismissed can do so.

FRAMING CHARGES, &c.

(1) The prisoner (rank and name), half pay, employed on military service, under the orders of (rank and name) an officer of the regular forces.

(2) The prisoner (number, rank and name), a militiaman of the ——— Regiment, called out for training (or embodied or otherwise subject to military law).

(3) The prisoner (name and description), being a follower of the forces, is charged with——

A Summary of Military Law.

294. If a soldier committed an offence while he was in the service, but was subsequently discharged, and therefore ceased to be subject to military law, how should his charge-sheet commence?

295. Give the commencement of a charge-sheet in the case of a militiaman who committed an offence while out for training, but whose period of training has expired.

296. In framing a charge, an officer is doubtful which word or expression would more accurately describe the offence; how should he act?

297. Can words or expressions sometimes be bracketed together in the same charge?

298. Give instances of those that can and those that cannot be bracketed together.

A Summary of Military Law.

The prisoner, John Brown, is charged with having, while being No. 100, Private John Brown, 126th Regiment, a soldier of the regular forces, committed the following offence, &c.

The prisoner, John Brown, is charged with having, while being No. 100, Private John Brown, of the — Regiment, a militiaman called out for training, committed the following offence (or offences), namely, &c.

He should frame two or more alternative charges, each charge containing one of the words or expressions applying to the facts.

Yes, by the conjunction “and;” but “or” *should never* be used.

A soldier *can* be charged with—

Making away with his arms, ammunition, *and* necessities.

A soldier *cannot* be charged with either—

Making away with his arms, ammunition, *or* necessities, or making away with by pawning and selling his arms, &c.

A Summary of Military Law.

299. In the latter case, how should a soldier be charged?

300. When there are more than one charge, is it necessary to mention in each the place and date?

301. Draw up a charge-sheet for the following offences—

At Alderney, on the 21st February, 1882, Lance-Corporal William Red, — Regiment, ordered No. 100, Private John Brown, — Regiment, to mop up some water. He refused to do so, saying, "I will not do it," and at the same time struck the before-mentioned non-commissioned officer in the face with his fist.

A Summary of Military Law.

Under two charges—

(1) Making away with by pawning his arms, &c.

(2) Making away with by selling his arms, &c.

Or, if desirable, he may be tried under *four* charges.

(1) Making away with by pawning his arms.

(2) Making away with by pawning his necessaries.

(3) Making away with by selling his arms.

(4) Making away with by selling his necessaries.

No ; it is sufficient to state “at the place and date mentioned in the first charge.”

CHARGE SHEET.

DESCRIPTION OF PRISONER. The prisoner, No. 100, Private John Brown, — Regiment, a soldier of the regular forces, is charged with—

1ST CHARGE.—First, disobeying a lawful command given by his superior officer,

in that,

at Alderney, on the 21st day of February, 1882, he disobeyed the lawful command of Lance-Corporal William Red, — Regiment, his superior officer, by refusing to mop up some water when so ordered, and saying at the time, “I will not do it.”

A Summary of Military Law.

301. Draw up a charge-sheet for the following offences—

At Alderney, on the 21st February, 1882, Lance-Corporal William Red, — Regiment, ordered No. 100, Private John Brown, — Regiment, to mop up some water. He refused to do so, saying, "I will not do it," and at the same time struck the before-mentioned non-commissioned officer in the face with his fist.

302. Give the *statement* of the charge or charges for the following offences :—

A soldier when on sentry leaving his post, and found in the town.

(This man was a defaulter at the time for a previous offence.)

303. A soldier drunk in his barrack-room. When ordered by a sergeant into confinement, he struck the sergeant in the face with his fist.

(This was the fifth case of drunkenness within the year.)

304. A soldier who had been discharged with disgrace from Her Majesty's forces enlists in the regular forces.

A Summary of Military Law.

2ND CHARGE.—Secondly, striking his superior officer, being in the execution of his office, in that, at the place and date mentioned in the first charge, he struck in the face with his clenched fist Lance-Corporal William Red, — Regiment, his superior officer, and in the execution of his office.

1ST CHARGE.—When a soldier acting as sentinel, leaving his post before he was regularly relieved.

2ND CHARGE.—Breaking out of barracks.

1ST CHARGE.—Drunkenness.

2ND CHARGE.—Striking his superior officer, being in the execution of his office.

CHARGE.—After having been discharged with disgrace from a part of Her Majesty's forces, enlisting in the regular forces without declaring the circumstances of his discharge.

A Summary of Military Law.

305. A soldier was absent from recruits' drill. A non-commissioned officer, sent to look for him, found him in his barrack-room, and ordered him to turn out for drill. He refused to do so, saying, "I won't do so," and at the same time struck the non-commissioned officer with his fist.

306. A soldier created a disturbance at night in his barrack-room by repeatedly shouting. At the same time he tore his greatcoat, value seven shillings and sixpence, in pieces. When subsequently placed in the guard-room, he said to the non-commissioned officer in charge of the guard, "I'll break your head before I leave the guard-room."

307. A soldier on picquet leaves the barracks.

308. A non-commissioned officer in command of the barrack guard neglects to confine a soldier who was absent without leave from tattoo and returned to barracks at one a.m.

309. A soldier drunk when parading for picquet.

A Summary of Military Law.

1ST CHARGE.—Failing to appear at the place of parade appointed by his commanding officer.

2ND CHARGE.—Disobeying a lawful command given by his superior officer.

3RD CHARGE.—Striking his superior officer, being in the execution of his office.

1ST CHARGE.—Conduct to the prejudice of good order and military discipline.

2ND CHARGE.—Making away with by destroying his clothing.

(In the particulars of this charge enter the value, so that the prisoner can be put under stoppages.)

3RD CHARGE.—Using threatening language to his superior officer.

CHARGE.—Breaking out of barracks.

CHARGE.—Neglect, to the prejudice of good order and military discipline.

CHARGE.—Drunkenness on duty.

A Summary of Military Law.

310. A non-commissioned officer in command of a guard is found drunk in the canteen.

311. A soldier found in his barrack-room drunk.
(This is the sixth instance of drunkenness in the twelve months.)

312. A militiaman, while out for training, enlists into Her Majesty's regular forces, thereby obtaining a free kit value two pounds.

313. A soldier at the time of his attestation falsely states to the justice of the peace that he had never before served, whereas he had done so, and been discharged from a corps of the regular forces.

314. A soldier under the temporary command of a non-commissioned officer of another corps struck him with his fist. On being taken into custody by a corporal of his own regiment he bit his finger.

A Summary of Military Law.

1ST CHARGE.—First — Leaving his guard without orders from his superior officer.

2ND CHARGE.—Secondly—Drunkenness on duty.

CHARGE.—Drunkenness.

CHARGE.—Fraudulent enlistment.

(In the particulars of the charge enter the value of the kit, so that the prisoner can be put under stoppages.)

CHARGE.—Making a wilfully false answer to a question set forth in the attestation paper, which was put to him by, or by direction of, a justice, before whom he appeared for the purpose of being attested.

1ST CHARGE.—First—Striking his superior officer, being in the execution of his office.

2ND CHARGE.—Secondly— Using violence to his superior officer in the execution of his office.

A Summary of Military Law.

315. A soldier when on barrack guard falsely accused the captain of the day of being drunk when he turned out the guard at 11 p.m.

316. A soldier found drunk in a public-house is arrested by the picquet, but on his way to the barracks he escapes.

(This is a fifth case of drunkenness within the year.)

317. A soldier on sentry found asleep.

318. A soldier is found in possession of public goods, and other goods the property of a non-commissioned officer of his regiment.

A Summary of Military Law.

CHARGE.—Making a false accusation against the officer, knowing such accusation to be false.

1ST CHARGE.—First—Drunkenness.

2ND CHARGE.—Secondly—When in arrest, escaping.

CHARGE.—When a soldier acting as sentinel, sleeping on his post.

1ST CHARGE.—First—Stealing public goods.

2ND CHARGE.—Secondly—Receiving, knowing them to be stolen, public goods.

3RD CHARGE.—Thirdly—Stealing goods the property of a comrade.

4TH CHARGE.—Fourthly—Receiving, knowing them to be stolen, goods the property of a comrade.

(The articles *having been recovered*, it is not necessary in the particulars of the charge to specify the price of each article. The prisoner cannot be put under stoppages for them.)

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319. A soldier at kit inspection was found to be deficient of a kersey, a pair of ammunition boots, a helmet, a spoon, and a knife.

320. A soldier absented himself from tattoo on the 1st January, 1871, and did not return till the 10th May, 1874. At the time of his absenting himself, his kit was found deficient of several articles of regimental necessities and clothing.

321. An officer gives in payment of a private debt a bill of exchange on a firm, knowing that there would not be any funds to meet the bill.

322. A soldier serving with a regiment of the regular forces falsely stated to his commanding officer that he had deserted from another corps of the regular forces.

323. A soldier who is dissatisfied with the liquor served out on board a ship *not* in commission tries to induce the other men of his company to mutiny.

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CHARGE.—Losing by neglect his clothing, equipment, and regimental necessities.

(State price of each article of clothing and equipment in the particulars of the charge, so that the prisoner can be put under stoppages to make them good. The necessities are settled between the prisoner and his captain.)

CHARGE.—Desertion.

(The prisoner cannot be charged with loss of clothing, as more than three years elapsed from the date of offence.)

CHARGE.—Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

CHARGE.—Falsing stating to his commanding officer that he had been guilty of desertion.

CHARGE.—Endeavouring to persuade persons in Her Majesty's regular forces to join in a mutiny.

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324. A soldier in a regiment at Aldershot sells a pair of regulation boots, and gets drunk on the proceeds.

325. A soldier absents himself without leave from tattoo, and returns eight days afterwards, having pawned a pair of regimental trousers and a pair of boots.

326. A soldier, by the desire of his comrade, cut off the latter's right forefinger with a hatchet, in order to render him unfit for further service.

327. A soldier induces his comrade to cut off his right forefinger, so that he may obtain his discharge from the service.

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1ST CHARGE.—First—Making away with by selling his regimental necessaries.

(If the prisoner had been drunk four times previously in the year, and his commanding officer desires to do so, he can be also charged with)

2ND CHARGE.—Secondly—Drunkenness.

1ST CHARGE.—First—Absenting himself without leave.

2ND CHARGE.—Secondly—Making away with by pawning his regimental clothing and necessaries.

(If the articles are *not* recovered, the price of *each* must be stated in the particulars, otherwise stoppage of pay could not be awarded to make the articles good.)

CHARGE.—Wilfully maiming another soldier, with intent thereby to render such other soldier unfit for service.

CHARGE.—Causing himself to be maimed by some person, with intent thereby to render himself unfit for service.

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333. A soldier, to avoid being put on a disagreeable duty, feigned sickness and used abusive language in the hospital to a sergeant of the Army Hospital Corps.

334. A soldier broke out of hospital when a court-martial prisoner, and was apprehended next day in the town.

335. A soldier was found to be drunk on the commanding officer's parade.

336. Some of the figures in a colour-sergeant's pay sheet were altered between certain dates. There was no evidence to prove he had altered them.

337.—A non-commissioned officer overstayed his *pass* from midnight till six o'clock next morning.

A Summary of Military Law.

1ST CHARGE.—First—Malingering.

2ND CHARGE.—Secondly—Using insubordinate language to his superior officer.

CHARGE.—When in confinement, escaping.

CHARGE.—Drunkenness on duty.

1ST CHARGE.—First—Knowingly, and with intent to defraud, altering a document which it was his duty to preserve.

2ND CHARGE.—Secondly—In a pay list, of the contents of which it was his duty to ascertain the accuracy, being privy to the making of a false statement.

3RD CHARGE.—Thirdly—By culpable neglect, omitting to make a report which it was his duty to make.

CHARGE.—Absenting himself without leave.

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338. A non-commissioned officer who was regimental orderly sergeant neglected to drill the defaulters at three p.m.

339. A corporal in charge of an escort was found drunk in a public-house.

340. A soldier in hospital under treatment for a sore leg was ordered by the medical officer to remain in his bed. During the day he was found running about the ward, and thereby greatly aggravated his disease.

341. A soldier on furlough goes to a justice and states he wishes his furlough prolonged to attend his mother's funeral. On enquiry, his mother is found to be alive.

A Summary of Military Law.

CHARGE.—Neglect to the prejudice of good order and military discipline.

CHARGE.—Drunkenness on duty,

CHARGE.—Being wilfully guilty of misconduct, by means of which misconduct he aggravated disease.

CHARGE.—Making a wilfully false statement to a justice in respect of the prolongation of furlough.

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**Questions given at the Military Competitive
Examination in September, 1882.**

342. Specify as many as you can of the military offences, committed when not on active service, to which the punishment of penal servitude is applicable under the Army Act.

**Questions given at the Military Competitive
Examination in September, 1882.**

Sect. 12. Desertion, or attempt at desertion.

Sect. 12. Persuading, or attempting to persuade or procure, &c.

Sect. 13. Fraudulent enlistment.

On second conviction for any of the above offences, and for first conviction of—

Sect. 17. Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods.

Sect. 20. Wilfully or otherwise releasing a prisoner without authority, or wilfully or without reasonable excuse permitting prisoners in their charge to escape.

Sect. 32. Enlisting into the regular forces, having been previously discharged with disgrace from any part of Her Majesty's forces, or dismissed from the Navy with disgrace.

Sect. 41. Manslaughter, treason-felony, and rape.

Also the offences punishable with death, such as—

Sect. 7. Mutiny and sedition, &c.

A Summary of Military Law.

342. Specify as many as you can of the military offences, committed when not on active service, to which the punishment of penal servitude is applicable under the Army Act.

343. Describe fully the provisions of the Army Act, together with those of the Queen's Regulations, for punishing drunkenness committed by private soldiers.

A Summary of Military Law.

Sect. 8. Striking, offering violence, &c., to a superior *in the execution of his office.*

Sect. 9. Disobeying, in such a manner as to show *wilful* defiance of authority, a lawful command given personally by a superior *in the execution of his office.*

Drunk on Sentry.—A soldier drunk on sentry should be tried by court-martial, and is liable under Sect. 6, Army Act, if on active service, to death; at other times, to imprisonment.

Simple cases of drunkenness.—It is distinctly stated in Queen's Regulations, par. 51, that a soldier *cannot* be tried for a simple act of drunkenness, unless it is an aggravated case, or the fifth case within the twelve previous months, but should be summarily dealt with by his commanding officer, and can be awarded—

- (1) Fine.
- (2) Fine, together with confinement to barracks.
- (3) Imprisonment, if the unpaid fines amount to twenty shillings.
- (4) Imprisonment, coupled with a fine, for a case that may be tried by court-martial, but which the commanding officer decides to deal with summarily.

If any of these punishments are awarded, the commanding officer should inform the soldier of his right to claim a court-martial in lieu thereof.

For the fifth and up to the eighth offence within twelve months, it is optional with the commanding

A Summary of Military Law.

343. Describe fully the provisions of the Army Act, together with those of the Queen's Regulations, for punishing drunkenness committed by private soldiers.

A Summary of Military Law.

officer to try the offender, or dispose of the case summarily.

For the eighth instance within twelve months the offender should be tried, unless one of the instances was a simple act of drunkenness (unaccompanied by any other offence) for which he was tried and convicted. In that case the commanding officer can use his discretion.

Aggravated drunkenness.—An aggravated case of drunkenness means—

- (1) Drunkenness on the march or on duty.
- (2) Drunkenness after being warned for duty.
- (3) When from the drunkenness he was unfit for duty.

Instances of drunkenness.—Instances of drunkenness are—

(1) All entries of drunkenness in the defaulters' book, whether punished summarily or by court-martial.

(2) When a soldier has absented himself to evade the consequences of drunkenness, and his commanding officer marks D against the offence in the column of drunkenness. This latter counts towards computing a fine, but not as an instance for a court-martial.

Fines.—The fines before alluded to are—

For the third and every subsequent instance—

(1) If within three months of previous instance,
7s. 6d.

(2) Over three months, and under six, 5s. od.

A Summary of Military Law.

343. Describe fully the provisions of the Army Act, together with those of the Queen's Regulations, for punishing drunkenness committed by private soldiers.

344. A soldier's kit is found to be deficient of his tunic, waist-belt, bayonet, and many articles of necessaries ; there is no evidence of what has become of them. Draw up, in outline, a charge sheet for his trial by court-martial.

A Summary of Military Law.

(3) Over six months, and under nine, 2s. 6d.

(4) Over 9 months, no fine.

If four preceding instances have been recorded against him in the previous twelve months, 2s. 6d. will be added to the above-named fines.

CHARGE SHEET.

DESCRIPTION OF PRISONER. The prisoner, No. 140, Private Thomas Atkins, 1st Gloucester Regiment, a soldier of the regular forces, is charged with—

1ST CHARGE.—First—losing by neglect his equipments and clothing,
in that,
at Portsmouth, on the 2nd March, 1882, his kit was found to be deficient of a tunic, waist-belt, and bayonet.

2ND CHARGE.—Secondly—losing by neglect his regimental necessaries.
in that,
at the place and date mentioned in the first charge, his kit was found deficient of the following articles of his regimental necessaries, viz. (Here mention each article and its value—without the latter the offender cannot be put under stoppages.)

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345. State the number and qualifications of the officers legally necessary to compose respectively general and district court-martial.

346. Define the offence, "Fraudulent Enlistment," according to the Army Act.

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A *general* court-martial shall consist, in the United Kingdom, India, Malta, and Gibraltar, of not less than nine officers—elsewhere, five—of not less than three years' service in either case. Five of the members should not be below the rank of captain.

If a general or field officer is available, no officer of less rank shall be appointed president of a general court-martial.

For the trial of a *commanding officer*, as many members as possible should have held similar commands.

For the trial of a *field officer*, no member should be under the rank of captain.

A *district* court-martial, in the United Kingdom, India, Malta, and Gibraltar, shall consist of not less than five—elsewhere, three—of not less than two years' service in either case.

The convening authority appoints the president of both general and district courts-martial, who should not be under a field officer, unless the convening officer is of less rank, or a field officer is not available. In that case a captain can sit as president, or even a subaltern, on a *district*, if a captain is not to be had.

Sect. 13, Army Act, states that every person subject to military law who commits any of the following offences—

(a) When belonging to either the regular forces or

A Summary of Military Law.

346. Define the offence, "Fraudulent Enlistment," according to the Army Act.

347. What facilities must be afforded a prisoner, for whose trial a court-martial has been ordered, to enable him to prepare his defence ?

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the militia when embodied, without having first obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist, enlists in Her Majesty's regular forces; or,

(b) When belonging to the regular forces, without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrolls himself or enlists in the militia, or in any of the reserve forces not subject to military law, or enters the Royal Navy—

Shall be deemed to have been guilty of fraudulent enlistment.

He shall be given every opportunity of preparing his defence, and shall be allowed free communication with his witnesses or legal adviser.

Not less than eighteen hours for a regimental court-martial, and twenty-four hours for a general court-martial or district court-martial. (This does not, as a rule, apply to field general courts-martial or summary courts-martial.) Before the prisoner is arraigned, an officer shall inform him of the charge, or charges, on which he is to be tried, and explain them, if necessary—ask him (the prisoner) for the names of his witnesses, so that steps may be taken to secure their attendance—give the prisoner a list of the names, rank, and corps of the president and members, and a list of the prosecution witnesses—also a copy of the summary of evidence (if any).

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348. A prisoner before a court-martial objects to the president and three of the members of the court. Describe fully the procedure and the right of voting in disposing of these objections.

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The objection to each is disposed of separately, that to the lowest of rank being first inquired into. All the other officers sitting on the court-martial shall vote on the disposal of the objection, notwithstanding that objections have been made to any of those officers.

The prisoner may call any person to give evidence in support of his objection.

The following would be considered valid reasons for objecting :—

- (1) The officer not being subject to military law.
- (2) The officer being convening or confirming authority.
- (3) The officer being prosecutor or witness for the prosecution.
- (4) The officer being the one who investigated the charge, or was on the court of inquiry regarding the case.
- (5) The officer having a personal interest in the case.
- (6) The officer not having the required length of service.

An objection to the president must be overruled by a majority of two-thirds of the court, or the court shall adjourn for the appointment of a new president.

An objection to a member can be disallowed by a simple majority, otherwise the member shall retire and a waiting member take his place.

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348. A prisoner before a court-martial objects to the president and three of the members of the court. Describe fully the procedure and the right of voting in disposing of these objections.

349. A soldier serving in the Royal Artillery is discovered to have been previously discharged as "incorrigible and worthless" from the Royal Marines. Frame, in outline, a charge for his trial.

350. What authorities have power to confirm the findings and sentences of regimental courts-martial, and what courses are open to such authorities on receiving the proceedings for confirmation?

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The president has no casting vote. If the votes are equal, the objection is allowed.

The prosecutor or Deputy Judge-Advocate cannot be objected to.

CHARGE.—After having been discharged with disgrace from a part of Her Majesty's forces, enlisting in the regular forces without declaring the circumstances of his discharge, .
in that,
at ———, on the ———, he enlisted into the Royal Artillery without declaring that he had been previously discharged as "incorrigible and worthless" from the Royal Marines.

The findings and sentences of regimental courts-martial can be confirmed by the convening officer, or officer having authority to convene such a court-martial, at the date of the submission of the finding and sentence thereof. The courses open to the confirming authority are—

(1) To confirm the proceedings wholly or in part, or refuse confirmation and add any remarks.

(2) To send back the finding and sentence, or the sentence only, for revision, stating his reasons for such revision.

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350. What authorities have power to confirm the findings and sentences of regimental courts-martial, and what courses are open to such authorities on receiving the proceedings for confirmation?

351. A person is reasonably suspected of being a deserter from the army. Describe the course of proceeding, with regard to him, authorised by the Army Act.

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(3) To commute, mitigate, or remit the sentence or any part of it.

(4) To withhold the confirmation for a time.

(5) To refer the case to superior authority for confirmation.

(6) To correct any slight error or informality in the manner or wording in which the finding or sentence is expressed.

(1) Upon reasonable suspicion, a constable, any officer, soldier, or other person, may arrest and bring him before a court of summary jurisdiction.

(2) Such court to deal with the case.

(3) If satisfied that the man is a deserter, the court shall give him in charge to the military authorities as soon as expedient ; meanwhile, he may be kept in civil custody.

(4) If, on confession, evidence of the truth is not forthcoming, prisoner may be remanded, and a descriptive return sent—in United Kingdom, to a Secretary of State ; abroad, to general officer commanding the forces.

(5) When a person is delivered into military custody, or committed as a deserter, a descriptive return to be sent as above—fee 2s., which Secretary of State will direct to be paid.

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351. A person is reasonably suspected of being a deserter from the army. Describe the course of proceeding, with regard to him, authorised by the Army Act.

352. What do you understand by the term "hearsay"? and explain why it is not ordinarily admissible as evidence in legal proceedings.

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(6) The court may, when necessary, remand from time to time for eight days, for the purpose of obtaining information.

Hearsay is the statement by a witness of facts that do not lie within his own knowledge, but which are derived from the oral or written information of others.

Hearsay evidence is rejected, because what the person said was not on oath, and the prisoner had no opportunity of cross-examining the person. This rule applies to "documentary" as well as to "parole" evidence ; thus writings supposed to contain a statement of the facts received from another person must be rejected.

There are, however, exceptions to the above rule. Thus the evidence of a person examined on oath at a former trial between the parties, and since deceased, can be received, and may be proved by a person who heard it, or by notes taken at the time.

Again. The declaration of a person who, having received a mortal injury, and believing himself to be dying, relates the cause of his injury, or any material circumstance, though not in presence of the accused ; but this evidence is only admissible when the death of the person who made the declaration is the substance of the charge.



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